



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
4 February
2016

Library News

Editor, Victorian Reports - Expressions of Interest Sought

An exciting opportunity is becoming available for the right person to step into a career-defining role as the Editor of the Victorian Reports.

Significant judgments of the Supreme Court of Victoria are selected and published in the long-standing and highly respected Victorian Reports. The Editor selects these decisions and oversees the process involving a team of law reporters, supported by professional publishers, before approving the final copy for publication. As such the role suits an experienced legal professional or academic with broad legal background who feels comfortable with a big workload, can make decisions confidently and liaise with the judiciary to enable a smooth and swift workflow.

Guided by the principle of the widest dissemination at the lowest cost, the Council of Law Reporting has adopted a new model for the publication of the Reports which will be published electronically via a dedicated website. The Reports will continue to be published in hard copy once a complete part or volume is ready. The incoming Editor is expected to apply creative yet pragmatic solutions to issues that arise during transition.

The Council requests that you register your interest by close of business on Monday 22 February 2016, via a form at:

www.surveymonkey.com/r/VREditor

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EXHIBITION: OPENING OF THE LEGAL YEAR

The Supreme Court Library has an exhibition on the Opening of the Legal Year.

The display outlines the history of the Opening of the Legal Year and includes pictures, articles and a judicial robe.

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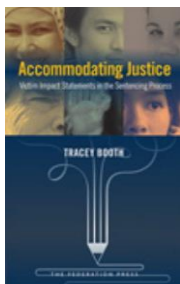
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New Books

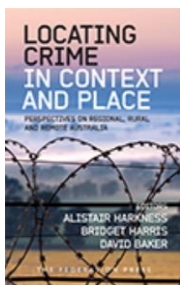
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/

No image
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Bennett, Paul, *Specialist Courts for Sentencing Aboriginal Offenders*
The Federation Press, NSW 2016
Call number: 340.5294 BEN (Supreme Court Library and Magistrates' Court Library)



Booth, Tracey, *Accommodating Justice: Victim Impact Statements in the Sentencing Process*
The Federation Press, NSW, 2016
Call number: 362.88 BOO (Supreme Court Library and Magistrates' Court Library)



Harkness, Alistair, Harris, Bridget and Baker, David, *Locating Crime in Context and Place: Perspectives on Regional, Rural and Remote Australia*
The Federation Press, NSW, 2016
Call number: 363.25 LOC (Supreme Court Library)

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available

Powles, Steven, Waine, Lydia and May, Radmila, *May on Criminal Evidence*
6th ed, Sweet and Maxwell, London, 2015
Call number: 345.06 MAY.6 (Supreme Court Library)

No image
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Saunders, Skye, *Whispers from the Bush: The Workplace Sexual Harassment of Australian Rural Women*
The Federation Press, NSW, 2015
Call number: LS 341.4133994 SAU (Supreme Court Library)



EXHIBITIONS IN THE LIBRARY

Chief Justice Stawell Exhibition

The Supreme Court Library has on display some books and artefacts to celebrate the 200th birthday of Chief Justice Sir William Stawell. Pick up the “11 things you didn’t know about Sir William Stawell” handout during your visit to the Library.

Legislation

Victorian Bills

The following Victorian Bills received a second reading since the last Library Bulletin.

- [Access to Medicinal Cannabis Bill 2015](#)
- [Building Legislation Amendment \(Consumer Protection\) Bill 2015](#)
- [Integrity and Accountability Legislation Amendment \(A Stronger System\) Bill 2015](#)
- [Judicial Commission of Victoria Bill 2015](#)
- [Rooming House Operators Bill 2015](#)
- [Transparency in Government Bill 2015](#)

Victorian Assents

The following Victorian Acts were assented to since the last Library Bulletin:

- [Adoption Amendment \(Adoption by Same-Sex Couples\) Act 2015 No. 68/2015](#)
- [Education Legislation Amendment \(TAFE and University Governance Reform\) Act 2015 No. 69/2015](#)
- [Terrorism \(Community Protection\) Amendment Act 2015 No. 70/2015](#)

Proclamations

There have been no Commonwealth Act proclamations since the last Library Bulletin.

Legislation

The following Victorian Act proclamations were made since the last Library Bulletin:

- *Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015* No. 63/2015
 - This Act came into operation on 1 January 2016 (VGG S426 22.12.2015)
- *Children, Youth and Families Amendment (Aboriginal Principal Officers) Act 2015* No. 57/2015
 - Section 4 and sections 6-11 came into operation on 4 January 2016 (VGG S426 22.12.2015)
- *Education Legislation Amendment (TAFE and University Governance Reform) Act 2015* No. 69/2015
 - This Act came into operation on 1 January 2016 (VGG S403 15.12.2015)
- *Energy Legislation Amendment (Consumer Protection) Act 2015* No. 49/2015
 - This Act came into operation on 1 January 2016 (VGG S403 15.12.2015)
- *Fisheries Amendment Act 2015* No. 64/2015
 - This Act came into operation on 16 December 2015 (VGG S403 15.12.2015)
- *Prevention of Cruelty to Animals Amendment Act 2015* No. 60/2015
 - This Act (except sections 31, 32, 34, 35, 37, 38, 40 and 42 and Part 7) came into operation on 23 December 2015 (VGG S426 22.12.2015)
- *Public Health and Wellbeing Amendment (No Jab, No Play) Act 2015* No. 55/2015
 - This Act came into operation on 1 January 2016 (VGG S403 15.12.2015)
- *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015* No. 51/2015
 - This Act came into operation on 23 December 2015 (VGG S426 22.12.2015)
- *Victims of Crime Commissioner Act 2015* No. 56/2015
 - This Act came into operation on 3 February 2016 (VGG S10 02.02.2016)

The following Victorian Acts came into operation by forced commencement since the last Library Bulletin:

- *Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014* No. 19/2014
 - Section 79 of this Act came into operation on 31 December 2015 (s. 2(4))
- *Judicial Entitlements Act 2015* No. 29/2015
 - Sections 4-47 and sections 74-89 of this Act came into operation on 1 January 2016 (s.2(3))
- *State Taxation Acts Further Amendment Act 2015* No. 67/2015
 - Section 3 of this Act came into operation on 1 January 2016 (s. 2(4))
- *Terrorism (Community Protection) Amendment Act 2015* No. 70/2015
 - This Act came into operation on 16 December 2015 (s. 2)
- *Victorian Energy Efficiency Target Amendment (Saving Energy, Growing Jobs) Act 2015* No. 61/2015
 - All provisions came into operation on 1 January 2016 (s. 2)

Following is a selection of Victorian Statutory Rules came into operation since the last Library Bulletin:

- *County Court (Chapter I Circuit Fees, Expenses and Allowances Amendment) Rules 2015* No. 162/2015 (VGG S405 15.12.2015)
- *Magistrates' Court General Civil Procedure and Miscellaneous Civil Proceedings (Costs Amendment) Rules 2015* No. 163/2015 (VGG S420 18.12.2015)
- *Magistrates' Court (Chapter I Miscellaneous Amendments) Rules 2015* No. 164/2015 (VGG S420 18.12.2015)

High Court Cases

CIVIL PROCEDURE - Costs - Where appellant succeeded on certain issues on appeal but unsuccessful in overall outcome - Whether costs order apportioning costs between parties or order that each party bear their own costs appropriate.

WORDS AND PHRASES - "costs follow the event"

Firebird Global Master Fund II Ltd v Republic of Nauru

[\[2015\] HCA 53](#)

23/12/2015

MIGRATION - Regional processing - Where plaintiff was "unauthorised maritime arrival" upon entry into Australian migration zone - Where plaintiff was removed to regional processing centre on Nauru pursuant to s198AD of Migration Act 1958 (Cth) - Where Commonwealth entered into arrangement in relation to regional processing functions - Whether plaintiff was detained by Commonwealth at Nauru Regional Processing Centre - Whether principles in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 apply.

CONSTITUTIONAL LAW (CTH) - Executive power of Commonwealth - Whether conduct of Commonwealth authorised by s61 of Constitution - Whether conduct of Commonwealth authorised by s198AHA of Migration Act. Constitutional law (Cth) - Legislative power of Commonwealth - Whether s 198AHA of Migration Act is a law with respect to aliens - Whether s 198AHA of Migration Act is a valid law of Commonwealth.

PROCEDURE - Standing - Whether plaintiff has standing to challenge lawfulness of conduct of Commonwealth with respect to plaintiff's past detention.

PRIVATE INTERNATIONAL LAW - Act of State doctrine - Where plaintiff's detention imposed by laws of Nauru - Whether Australian court should pronounce on constitutional validity of legislation of another country.

WORDS AND PHRASES - "aliens power", "constraints upon the plaintiff's liberty", "control", "detention", "effective control", "memorandum of understanding", "non-statutory executive power", "regional processing country", "regional processing functions".

CONSTITUTION, s 51(xix), s61.

MIGRATION ACT 1958 (CTH), s198AB, s198AD, s198AHA.

Plaintiff M68-2015 v Minister for Immigration and Border Protection & Ors

[\[2016\] HCA 1](#)

03/02/2016

MIGRATION - Visa application - Clause 202.222(2) of Sched 2 to Migration Regulations 1994 (Cth) provides for grant of Refugee and Humanitarian (Class XB) (Subclass 202) visa if Minister satisfied there are compelling reasons for giving special consideration to granting visa - Where applications for Subclass 202 visas refused by delegate of Minister - Where delegate considered capacity of Australian community to permanently settle visa applicants - Where delegate considered departmental policy that established priorities to be accorded to visa applications - Construction of cl 202.222(2) - Whether decision affected by jurisdictional error.

WORDS AND PHRASES - "capacity", "compelling reasons", "irrelevant considerations", "jurisdictional error", "priorities policy", "special consideration".

Migration Regulations 1994 (Cth), Sched 2, cl 202.222(2).

Plaintiff M64/2015 v Minister for Immigration and Border Protection

[\[2015\] HCA 50](#)

17/12/2015

MIGRATION - Visa cancellation - Migration Act 1958 (Cth), s116(1)(b) provides that Minister may cancel visa if satisfied that visa holder has not complied with condition of visa - Where delegate cancelled plaintiff's visa on satisfaction that plaintiff had breached visa condition - Where delegate's satisfaction formed by process of fact-finding tainted by non-compliance of third party with imperative statutory duty - Whether delegate failed to make obvious inquiry as to critical fact - Whether decision affected by jurisdictional error. MIGRATION - Original jurisdiction of High Court - Where plaintiff's application for remedy made outside time limit in Migration Act 1958 (Cth), s486A(1) - Operation of s486A. WORDS AND PHRASES "extension of time", "imperative duty", "jurisdictional error".

Constitution, s75(v).

Education Services for Overseas Students Act 2000 (Cth), s19. Migration Act 1958 (Cth), s116(1)(b), s119(1), s486A.

Wei v Minister for Immigration and Border Protection

[\[2015\] HCA 51](#)

17/12/2015

SLIP RULE - Costs order - Special leave undertaking that insurer bear costs of application and appeal to High Court - Insurer successful in appeal - Whether costs order in orders of court appealed from should have been set aside.

WORDS AND PHRASES - "accidental slip or omission", "test case"

Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross; Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Thelander; Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Thelander

[\[2015\] HCA 52](#)

17/12/2015

Victorian Supreme Court Cases

Court of Appeal

ADMINISTRATIVE LAW - Application for leave to appeal - Judicial review of decision of Police Registration and Services Board - Board required to have regard to the public interest - Whether Board failed to take public interest into account - No obligation to provide reasons in statute - Statement made as to basis for determination - Examination of transcript and determination together - Whether inference that public interest not taken into account should be drawn - Application for leave granted - Appeal dismissed - Police Regulation Act 1958 s86AM.

Chief Commissioner of Police v Chen, Yong and Police Registration Services

Osborn JA, McLeish JA, and Ginnane AJA

[\[2015\] VSCA 361](#)

18/12/2015

ADMINISTRATIVE LAW - Application for leave to appeal - Judicial review of decision of Police Registration and Services Board - Board required to have regard to the public interest - Whether Board failed to take public interest into account - No obligation to provide reasons in statute - Statement made as to basis for determination - Examination of transcript and determination together - Whether inference that public interest not taken into account should be drawn - Application for leave granted - Appeal dismissed - Police Regulation Act 1958 s86AM, s86AN.

Chief Commissioner of Police v McCann, Calum and Police Registration and Services Board

Osborn JA, McLeish JA, and Ginnane AJA

[\[2015\] VSCA 362](#)

18/12/2015

ADMINISTRATIVE LAW - Application for leave to appeal - Victorian Civil and Administrative Tribunal - Appeal on questions of law - Whether proper question of law agitated by proposed grounds of appeal - Nature of review jurisdiction of the Tribunal - Whether the Tribunal misdirected itself - Whether the Tribunal had regard to an irrelevant consideration - Whether findings of fact open - Proposed grounds have no prospect of success - Leave to appeal refused.

HUMAN RIGHTS - Charter of Human Rights and Responsibilities Act 2006 - Relevance to the construction of Planning and Environment Act 1987 - Freedom of religion - Proper consideration of a relevant human right in the making of a decision - Castles v Secretary of the Department of Justice (2010) 28 VR 141 approved.

PLANNING LAW - Planning and Environment Act 1987 - Multifactorial assessment for net community benefit and acceptable outcomes - Construction of s60(1)(f).

WORDS AND PHRASES - 'significant social effect'.

Hoskin, Julie & Anor v Greater Bendigo City Council & Ors (According to the attached Schedule)

Warren CJ, Osborn JA, and Santamaria JA

[\[2015\] VSCA 350](#)

16/12/2015

APPEAL - Judicial review - Appellant owned chicken processing factory where employee of cleaning contractor died - Appellant charged with offence under Occupational Health and Safety Act 2004 - Charge alleged failure to ensure chicken processing line not operating and failure to ensure there was an adequate system to prevent contact with machine when being cleaned - Question of validity of charge - Magistrate found charge invalid - On review, trial judge held charge valid - Charge must contain particulars necessary to give reasonable information as to the nature of the charge - More than recitation of statute required - Valid charge did not require specification of detailed actions reasonably practicable for defendant to take to prevent identifiable risk eventuating - Fundamental requirement that charge specify act or omission which constitutes contravention - Use of a standard described as 'adequate' - Occupational Health and Safety Act 2004 (Vic) s20 and s26 - Criminal Procedure Act 2009 (Vic) s6 and s8 and Schedule 1 - Kirk v Industrial Court of New South Wales (2010) 239 CLR 531 considered.

Baiada Poultry P/L v Inspector Glenister, Mark Kenneth (Victorian WorkCover Authority) & Anor

Ferguson JA, McLeish JA, and Robson AJA

[\[2015\] VSCA 344](#)

17/12/2015

APPEAL - Judicial review - First respondent proposes to demolish its building - Relevant building surveyor determined first respondent's proposed protection works to protect appellant's adjoining building appropriate - Appellant appealed building surveyor's determination to second respondent - Second respondent made determination in document with various headings including 'determination of the panel' and 'reasons of the panel' - First respondent sought judicial review of second respondent's determination - Trial judge concluded matters addressed under headings 'determination of the panel' and 'reasons of the panel' together comprised a determination under s149(1) of the Building Act 1993 (Vic) - Trial judge declared second respondent's determination uncertain and void - No uncertainty in second respondent's determination - Determination contained under heading 'determination of the panel' - Reasons of the panel not part of the determination - Second respondent validly set aside building surveyor's determination and substituted its own decision that proposed protection works were not appropriate - Building Act 1993 (Vic) s84 and s149(1) - Building Regulations 2006 (Vic) regs 602, 604 and 607.

Colonial Range P/L v CES-Queen (Vic) P/L & Anor

Warren CJ, Osborn JA, and Ferguson JA

[\[2015\] VSCA 356](#)

14/12/2015 (delivered ex tempore)

BANKING - Appeal - Incorporation of contractual terms - Whether Code of Banking Practice incorporated into guarantees - Whether Bank owed contractual obligation to exercise care and skill of a diligent and prudent banker in assessing loan application and forming opinion about ability of borrower to repay - Construction of incorporated terms - Inability of borrower to repay loan from business income - Whether contractual obligation extended to assessment of ability of borrower to repay taking into account other potential financial support - Whether breach - Whether breach caused loss and damage - Appeal dismissed.

CONTRACT - Compromise - Settlement of claims - Construction - Whether compromise encompassed then unformulated claim of breach of Code of Banking Practice - Whether compromise vitiated by economic duress - *Grant v John Grant & Sons Pty Ltd* (1954) 91 CLR 112 - Appeal dismissed.

PRACTICE AND PROCEDURE - Application for leave to amend notice of appeal - Application of principles in *Ankar Pty Ltd v National Westminster Finance (Australia) Ltd* (1987) 162 CLR 549 - Whether performance by Bank of term of guarantees a condition precedent to performance by guarantors - Whether breach by Bank of term altered guarantors' rights in a substantial or prejudicial manner - Whether matters could have been subject of evidence at trial - Application refused.

Doggett, Stephen and Sullivan, Kevin v Commonwealth Bank of Australia

Whelan JA, McLeish JA, and Garde AJA

[\[2015\] VSCA 351](#)

17/12/2015

COSTS - Application for leave to appeal wholly unsuccessful - Proposed appeal grounds not initially discernible - Overarching obligations of parties under the Civil Procedure Act 2010 - Whether planning objection in public interest - No basis for departing from usual rule - No point of principle.

Hoskin, Julie & Anor v Greater Bendigo City Council & Ors (according to the attached Schedule) (No 2)

Warren CJ, Osborn JA, and Santamaria JA

[\[2015\] VSCA 370](#)

23/12/2015

COSTS - Trustees - Applications for leave to appeal - Dispute between capital beneficiaries and trustees - Failure by trustees to maintain and provide full accounts - Trustees commenced proceeding to pass accounts and wind up trusts - Removal of trustees - Proceeding dismissed by consent save as to costs - Whether trustees entitled to costs of proceeding to be paid out of trusts - Whether proceeding commenced for proper purpose - Whether trustees failed to perform duties with reasonable diligence and care - Applications for leave to appeal dismissed.

Wales, Persephone (as the representative of the Estate of Wales, Murray Wright, deceased) and Wales, Rohan Wright v Wales, Gladys and Matear, Roslyn and Case, Suzanne Marie; Wales, Julian v Wales, Gladys and Matear, Roslyn and Case, Suzanne Marie

Kyrou JA, McLeish JA, and Ginnane AJA

[\[2015\] VSCA 345](#)

16/12/2015

COSTS - Trustees - Application for leave to appeal refused - Whether respondents' costs of negotiating summary of facts should be paid by applicant - Whether applicant's costs of preparing amended written case should be paid by respondents - Applicant ordered to pay respondents' costs of the application for leave to appeal.

COSTS - Trustees - Applications for leave to appeal refused - Respondents sought direction that Costs Court may allow fees of senior counsel in excess of scale - Whether departure from scale justified - Direction refused - Supreme Court (Chapter I Scale of Costs Appendices A and B Amendment) Rules 2014 r19.

Wales, Persephone (as the representative of the Estate of Wales, Murray Wright, deceased) and Wales, Rohan Wright v Wales, Gladys and Matear, Roslyn and Case, Suzanne Marie; Wales, Julian v Wales, Gladys and Matear, Roslyn and Case, Suzanne Marie (No 2)

Kryou JA, McLeish JA, and Ginnane AJA

[\[2015\] VSCA 365](#)

18/12/2015

CRIMINAL LAW - Appeal - Conviction - Aggravated people smuggling - Oral admission to police that applicant worked with people smugglers - Evidence Act 2008 s90 - Whether unfair to use the evidence - No error in trial judge failing to exclude the evidence - Application for leave to appeal refused.

Khamisi, Sharam v The Queen

Priest JA and Beach JA

[\[2015\] VSCA 355](#)

16/12/2015

CRIMINAL LAW - Appeal - Conviction - Evidence - Importation of border-controlled substance - Applicant interviewed by Customs officers - Implied admissions during interview - Interview not recorded - Whether evidence admissible - Whether applicant 'questioned as a suspect' - Leave to appeal refused - R v Raso (1993) 68 A Crim R 495; Nabole v The Queen [2014] VSCA 297 applied - Crimes Act 1914 (Cth) s23V.

CRIMINAL LAW - Appeal - Conviction - Post offence conduct - Evidence of incriminating conduct - Statutory requirement of notice - Admissions relied on not specified in notice - No issue taken at trial or on appeal - Directions to jury - Jury Directions Act 2013 s23, s24, s25 - Lowe v The Queen [2015] VSCA 327 referred to.

CRIMINAL LAW - Appeal - Sentence - Parity - Co-offender received lower sentence - Differences in role, culpability, prior convictions - Sentencing differential reasonably open - Leave to appeal refused.

WORDS AND PHRASES - 'suspect', 'questioned as a suspect'.

Maeda, Shozo v Director of Public Prosecutions (Cth)

Maxwell P, Redlich JA, and Osborn JA

[\[2015\] VSCA 367](#)

22/12/2015

CRIMINAL LAW - Appeal - Conviction - Irregularity - Defence counsel previously acted for Crown witness - Whether cross-examination prejudiced - Whether substantial miscarriage of justice - Crown concession - Appeal allowed - Retrial ordered.

CRIMINAL LAW - Appeal - Conviction - Crown concession on one ground of appeal - No concession on second ground - Appeal allowed - Conviction quashed - Retrial ordered - Whether Court obliged to consider second ground - Applicant acquiesced in making of orders - Ground abandoned - Court functus officio.

Patounas, Anthony v The Queen

Maxwell P and Beach JA

[\[2015\] VSCA 369](#)

22/12/2015

CRIMINAL LAW - Appeal - Conviction - Six charges of child sexual offences against one complainant - Inconsistencies in complainant's evidence - Inconsistencies between complainant's evidence and the evidence of other witnesses - Whether convictions unsafe and unsatisfactory - Statements made by complainant to psychologist - Whether capable of being used as evidence of consistency - Whether jury properly directed on use of the psychologist's evidence - Application for leave to appeal refused.

Owens, Lawrence (a pseudonym) v The Queen

Maxwell P, Priest JA, and Beale AJA

[\[2015\] VSCA 352](#)

18/12/2015

CRIMINAL LAW - Appeal - Interlocutory appeal - Sexual penetration of child under 16, indecent act with child under 16 - Admissibility of evidence - Tendency and coincidence evidence - Subsequent offending against other children - Guilty plea - Whether evidence of admitted offending admissible as tendency or coincidence evidence - Whether sufficient similarity or commonality in events or surrounding circumstances - Whether evidence showed tendency to act in particular way - Tendency and coincidence reasoning distinguished - Judge's conclusion reasonably open - Leave to appeal refused - Evidence Act 2008 s97, s98, s101.

Page, Luke (a pseudonym) v The Queen

Maxwell P, Redlich JA, and Beale AJA

[\[2015\] VSCA 357](#)

17/12/2015

CRIMINAL LAW - Appeal - Sentence - Bail pending appeal - Applicant sentenced on basis of incorrect facts - Crown concession of error - Whether different sentence likely to be imposed - Whether non-custodial sentence open if applicant re-sentenced - Fairness - Risk of applicant serving time in custody unnecessarily - Bail granted - Re Zoudi (2007) 14 VR 580 applied.

Fattah, Mohamed Abdul v The Queen

Maxwell P

[\[2015\] VSCA 371](#)

22/12/2015

CRIMINAL LAW - Appeal - Sentence - Multiple armed robberies committed in a group - Two applicants (A1 and A2) co-offenders in group - A1 sentenced to 4y, 4m imprisonment and 4y Community Corrections Order (CCO) - Breach of Sentencing Act 1991 s11 by failure to fix non-parole period - *Deng-Mabior v The Queen* [2015] VSCA 179; *Boulton v The Queen* [2014] VSCA 342 considered - Whether certain individual sentences, total effective sentence or combined effect of total effective sentence and CCO manifestly excessive - No direct nexus between Verdins disorder and offending - General and specific deterrence incorrectly moderated - CCO not alternative to imprisonment in every case - Appeal allowed - Non-parole period of 3y, 10m fixed - Total effective sentence and CCO unaltered - *R v Verdins* (2007) 16 VR 269; *DPP v O'Neill* [2015] VSCA 325; *DPP v Terrick* (2009) 24 VR 457 considered - Sentencing Act 1991 s11, s13, s44.

CRIMINAL LAW - Appeal - Sentence - A2 sentenced to 8y imprisonment, non-parole period 6y - Whether individual sentences, non-parole period and total effective sentence contrary to parity principle - Whether parity principle confined to lowest sentence passed on co-offender - Parity principle informed by sentences of all comparable co-offenders - No error in differentiating A1 and A2 - A2 as leading participant in offences - A1 with notably disadvantaged background and associated psychological issues - Whether non-parole period inconsistent with judge's stated intention - No 'usual' non-parole period - No explanation for diverging from intention - *Kumova v The Queen* (2012) 37 VR 538; *Wallace v The Queen* [2012] VSCA 114 followed - Appeal allowed - Re-sentencing by reducing individual sentence on charge 2 to two years - Order for cumulation on charge 2 unaltered - Total effective sentence unaltered - Non-parole period of 5y fixed.

Abdou, Mohammed v The Queen; Chebib, Ahmed v The Queen

Redlich JA, Beach JA, and Beale AJA

[\[2015\] VSCA 359](#)

17/12/2015

CRIMINAL LAW - Appeal - Sentence - Negligently causing serious injury - Driving motor vehicle - Sentence 3y 6m - Whether manifestly excessive - High degree of negligence - Excessive speed - High blood alcohol level - Very serious injuries - Offending in upper range of seriousness - Appeal dismissed.

CRIMINAL LAW - Appeal - Sentence - Negligently causing serious injury - Driving motor vehicle - Sentence 4y - Whether manifestly excessive - High degree of negligence - Excessive speed - High blood alcohol level - Very serious injuries - Offending in upper range of seriousness - Appeal dismissed.

CRIMINAL LAW - Sentence - Current sentencing practice - Negligently causing serious injury - Driving motor vehicle - Maximum penalty increased from 5y to 10y - Whether sentencing practice reflects increased maximum - Whether sentencing for upper range offences adequate - Need for sentencing practice to change - Crimes Act 1958 s24, Sentencing Act 1991, s5(2)(a), s5(2)(b).

Harrison, Phoenix v The Queen; Rigogiannis, John v The Queen

Maxwell JA, Redlich JA, and Tate JA

[\[2015\] VSCA 349](#)

16/12/2015

CRIMINAL LAW - Appeal - Sentence - Robbery, affray, recklessly cause serious injury - Sentence 7y, non-parole period 4y 6m - Whether manifestly excessive - Traumatic and deprived background - Relevance of disadvantage to sentencing - Whether personal circumstances sufficiently reflected in sentence imposed - Serious violent offending - Multiple prior convictions for serious violence - Protection of the community - Specific deterrence - Sentence within range - Appeal dismissed.

Stewart, Norman v The Queen

Maxwell P and Priest JA

[\[2015\] VSCA 368](#)

22/12/2015

CRIMINAL LAW - Application for leave to appeal - Interlocutory appeal - Evidence - Surveillance devices - Listening device - Mobile telephone belonging to suspect - Listening capability remotely activated - Warrant authorised 'use' of device to record conversations - Whether remote activation authorised - Leave to appeal refused - Surveillance Devices Act 2004 (Cth) s6, s18.

WORDS AND PHRASES - 'Use'.

Watkins, Ted (a pseudonym) v Director of Public Prosecutions (Respondent) and Commissioner of the Australian Federal Police (Intervenor); Mann, Vincent v Director of Public Prosecutions (Respondent) and Commissioner of the Australian Federal Police (Intervenor)

Maxwell P, Osborn JA, and Priest JA

[\[2015\] VSCA 363](#)

18/12/2015

CRIMINAL LAW - Conviction - Appeal - Indecent act with a child under 16 - Sexual penetration of a child under 16 - Reliability of complainants - Whether convictions unsafe and unsatisfactory - Age of complainants relevant to jury assessment of reliability - Conviction reasonably open to jury - Application for leave to appeal refuse.

CRIMINAL PROCEDURE - Change of Plea - Whether judge erred in not accepting change to plea of guilty prior to sentencing - Test to be applied in change of plea applications is whether there would be a miscarriage of justice, R v Middap (1989) 43 A Crim R 362, applied - Whether 'genuine consciousness of guilt' separate question under test, Maxwell v The Queen (1996) 184 CLR 501, Meissner v The Queen (1995) 184 CLR 132, Kumar v The Queen [2014] VSCA 102, considered - No issue as to applicant's belief of guilt raised - Whether proof of belief in guilt required - Review of authorities on change of plea - Appeal dismissed.

Weston, Burt Norwood (a pseudonym) v The Queen

Redlich JA, Whelan JA, and Kaye JA

[\[2015\] VSCA 354](#)

17/12/2015

CRIMINAL LAW - Practice and procedure - Jury - Empanelment - Right to peremptory challenge - Juries Act 2000 s36, s39 - Peremptory challenge requires accused to have adequate time to visually inspect prospective juror - Review of historic practice of jury empanelment - Inadequate time to view juror's face - Whether waiver of objection to procedure - Right to peremptory challenge infringed - Appeal allowed - Conviction quashed - Retrial ordered.

CRIMINAL LAW - Evidence - Record of interview - Investigators raise question of motive of complainant to lie - Whether answers were of probative value - *Palmer v The Queen* (1998) 193 CLR 1, distinguished - *R v Arundel* [1992] 2 VR 228; *R v O'Neill* (2003) 7 VR 408; *R v MMJ* (2006) 166 A Crim R 501, considered.

CRIMINAL LAW - Rape - Conviction - Appeal - Unsafe and satisfactory - Verdict reasonably open to jury.

CRIMINAL LAW - Rape - Resentencing on multiple counts.

PRACTICE AND PROCEDURE - Legal Practitioners - Duty to the court and client - Obligation to raise irregularities in procedure with Court.

Theodoropoulos, George v The Queen

Redlich JA, McLeish JA, and Beale AJA

[\[2015\] VSCA 364](#)

18/12/2015

CRIMINAL LAW - Sentence - Appeal and application for leave to appeal against sentence - Commonwealth offence - White collar crime - Repeated and extended fraudulent lodging of Business Activity Statements claiming fuel rebates - Systematic defrauding of public revenue which relies on trust and integrity - General deterrence - Whether general deterrence should be a sentencing objective in Commonwealth offences - Distinction between 'marginal general deterrence' and 'absolute general deterrence' - Whether the principle of general deterrence is inconsistent with s16A of the Crimes Act 1914 (Cth) - Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015 (Cth) - Whether introduction of express reference to general deterrence in s16A(2) implied that it was not previously a relevant consideration in sentencing federal offenders - Whether previous good character is a sentencing consideration in white collar offences - Principle of proportionality - Whether proportion of harm caused by the offending should be a key sentencing consideration - Whether white collar offences committed against the public revenue should be distinguished from white collar offences committed against individuals - Whether sentence of 8 years with recognisance release order after 5 years is manifestly excessive - Appeal dismissed and application for leave to appeal refused.

Aitchison, Martin v The Queen

Whelan JA and Santamaria JA

[\[2015\] VSCA 348](#)

15/12/2015

EMPLOYER AND EMPLOYEE - Long service leave - Casual employment - Construction industry - Labour hire - Appellant labour hire company supplied specialist electricians to switchboard manufacturer - Whether 'work of a kind' covered by Electrical Contracting Industry Award 1992 - Whether provision of 'electrical services' - Whether appellant 'electrical contractor' - Manufacturing work distinguished - Long service leave charge not payable - Appeal allowed - Construction Industry Long Service Leave Act 1997 s4.

Baytech Trades P/L (ACN 147 997 788) v Coinvest Ltd

Maxwell P, Tate JA, and John Dixon AJA

[\[2015\] VSCA 342](#)

17/12/2015

EVIDENCE - Discovery - Public interest immunity - Whether Victoria Police internal documents on operational tactics of Mounted Branch covered by immunity - Whether documents relate to 'matters of state' - Whether disclosure would prejudice the proper functioning of Victoria Police Mounted Branch - Relevance and importance to proceeding - *Conway v Rimmer* [1968] AC 910, *Sankey v Whitlam* (1978) 142 CLR 1, *D v National Society for the Prevention of Cruelty to Children* [1978] AC 171, *Young v Quin* (1985) 4 FCR 483, *Attorney-General (NSW) v Stuart* (1994) 34 NSWLR 667, *Eastman v The Queen* (1997) 76 FCR 9, *R v Young* (1999) 46 NSWLR 681, *Victoria v Seal Rocks Victoria (Australia) Pty Ltd* (2001) 3 VR 1, *Skrijel v Mengler* [2003] VSC 137, *Royal Women's Hospital v Medical Practitioners Board of Victoria* (2006) 15 VR 22, *New South Wales v Public Transport Ticketing* [2011] NSWCA 60, *Ahmet v Chief Commissioner of Police* [2014] VSCA 265, *Dupont & Chief Commissioner of Police* [2015] FamCAFC 64, discussed - Evidence Act 2008 s130 and s131A.

EVIDENCE - Public interest immunity - Whether duty of legal practitioners to use the information only for the proper conduct of the proceeding would be sufficient protection - *Harman v Secretary of State for the Home Office* [1983] 1 AC 280, *Seymour v Price* [1998] FCA 1224, considered - Appeal dismissed.

Ryan, Mark v State of Victoria

Tate JA, Santamaria JA, and Ferguson JA

[\[2015\] VSCA 353](#)

17/12/2015

INSURANCE - Insurance contracts - Construction - Exclusion clause - Directors and officers' insurance - Exclusion of claims by shareholders of company - Exclusion specified disqualifying attributes - Claim by shareholder - Whether shareholder had disqualifying attributes - Exclusion clause applicable - Appeal dismissed

Oz Minerals Holdings P/L (ACN 101 657 309) & Ors v AIG Australia Ltd (ACN 004 727 753)

Maxwell P, Kyrou JA, and Robson AJA

[\[2015\] VSCA 346](#)

17/12/2015

JUDICIAL REVIEW - Application for leave to appeal - Mandamus - Statutory construction - Agreement to a request for disability services pursuant to s49 of the Disability Act 2006 - Whether agreement gives rise to enforceable statutory duty to provide requested services - Application for leave to appeal granted - Appeal dismissed.

Barnes, Philip v The State of Victoria and The Secretary of The Department of Health and Human Services

Santamaria JA, Ferguson JA, and McLeish JA

[\[2015\] VSCA 343](#)

16/12/2015

PRACTICE AND PROCEDURE - Directions - Application to supplement appeal materials - Application to vacate hearing date - Supreme Court (General Civil Procedure) Rules 2015, r64.15(1), r64.15(5)(b), r64.27(3) and r64.40.

Finch, Jo-Anne v Thomas, Arnold & Becker P/L

Beach JA

[\[2016\] VSCA 2](#)

03/02/2016

PRACTICE AND PROCEDURE - Application for leave to appeal against summary judgments granted by County Court - Applicants were real estate agents - Applicants claimed payment of commission and respondent counterclaimed for repayment of commission based on applicants' breaches of disclosure provisions in s49A of Estate Agents Act 1980 - Whether summary judgments inappropriate having regard to principles relating to estoppel, quantum meruit and rectification - Whether judge's discretion miscarried by granting a shorter adjournment than the applicants had requested to enable them to file affidavit material - Application for leave to appeal granted.

PRACTICE AND PROCEDURE - Application for a stay of execution of judgment - Whether appeal would be rendered nugatory without a stay because of pending winding up proceedings against applicants - Evidence in winding up proceedings of forthcoming finance facility that would enable payment of judgment debts - Application for a stay refused.

Cross Country Realty Victoria P/L and Park Trent Properties Group P/L v Ubertas 350 William Street P/L

Kyrou JA and McLeish JA

[\[2015\] VSCA 347](#)

16/12/2015

STATUTORY INTERPRETATION - Discovery and inspection of documents - Statutory secrecy provisions - Whether secrecy provisions in the Gambling Regulation Act 2003 preclude an order for inspection of particular discovered documents, or production of those documents at hearings, or both - Gambling Regulation Act 2003 s10.1.29, s10.1.30, s10.1.31, s10.1.32.

CONSTITUTIONAL LAW - Whether secrecy provisions in the Gambling Regulation Act 2003 limit the jurisdiction, powers and authorities of the Supreme Court for the purposes of s85 of the Constitution Act 1975 - Whether manner and form requirements in s85(5) of the Constitution Act 1975 were required to be complied with - Gambling Regulation Act 2003 s10.1.29, s10.1.30, s10.1.31, s10.1.32 - Constitution Act 1975 s85.

State of Victoria v Intralot Australia P/L (ACN 114 435 531)

Beach JA, Kyrou JA, and Cavanough AJA

[\[2015\] VSCA 358](#)

18/12/2015

Commercial & Equity Division. Commercial Court

CONTEMPT OF COURT - Breaches of freezing order - Breaches wilful - Whether Court should convict - Appropriate penalty - Supreme Court of Victoria (General Civil Procedure) Rules 2005 r75.11.

CC Containers P/L & Ors (according to the attached Schedule) v Lee, Desmond Ming & Ors (according to the attached Schedule) (No 10)

Ginnane J

[\[2015\] VSC 757](#)

21/12/2015

CORPORATIONS - Liquidator's application to approve litigation funding agreement - Standing of defendants to object - Secured creditor as litigation funder - Contest over validity of security - Benefit to unsecured creditors uncertain - Application refused - Corporations Act 2001 (Cth) s477(2B).

In the Matter of Ascot Vale Self Storage Centre P/L (Receivers and Managers Appointed) (In Liquidation) (ACN 092 643 939): In the Matter of Ascot Vale Self Storage Centre P/L (Receivers and Managers Appointed) (In Liquidation) (ACN 092 643 939) & Anor v Nom De Plume Nominees P/L (ACN 006 750 090) & Anor

Judd J

[\[2015\] VSC 751](#)

22/12/2015

CORPORATIONS - Originating Process - Service - Corporations Act 2001 (Cth) s588FF - Supreme Court (Corporations) Rules 2013 r2.7.

PRACTICE AND PROCEDURE - Extension of time for service - Application of Supreme Court (General Civil Procedure) Rules 2005 r5.12.

In the Matter of Australian Property Custodian Holdings Ltd (ACN 095 474 436) (Receivers and Managers Appointed) (Controllers Appointed) (In Liquidation) between Horne, Stirling Lindley and Vrsecky, Petr (in their capacity as joint and several liquidators of Australian Property Custodian Holdings Ltd (ACN 095 474 436) (Receivers and Managers Appointed) (Controllers Appointed) (In Liquidation) & Ors v Retirement Guide Management P/L (ACN 125 225 390) & Ors (according to the attached schedule)

Judd J

[\[2015\] VSC 745](#)

18/12/2015

Commercial Court

ARBITRATION - Application to stay execution of a judgment enforcing a foreign arbitral award - Relevance of the context of international commercial arbitration - International Arbitration Act 1974 (Cth) - Gujarat NRE Coke Ltd v Coeclerici Asia (Pte) Ltd [2013] FCA 918 - Elders International Australia Pty Ltd v Beijing Be Green Import & Export Co Ltd (2014) 324 ALR 194 - Far Eastern Shipping Co v AKP Sovcomflot [1995] 1 Lloyd's Rep 520 - Strandore Invest A/S v Soh [2010] SGHC 174.

PRACTICE AND PROCEDURE - Application to stay execution of a judgment pending an appeal - Matter properly to be decided by the Court of Appeal - Supreme Court (General Civil Procedure) Rules 2015, r66.16.

Indian Farmers Fertiliser Cooperative Ltd, Kisan International Trading FZE v Gutnick, Joseph Isaac, Legend International Holdings, Inc (No 2)

Croft J

[\[2015\] VSC 770](#)

22/12/2015

ARBITRATION - Enforcement of foreign award - Public policy ground for refusing enforcement - Whether enforcement of a foreign award that allows for double recovery would be contrary to public policy - Discretion to enforce where enforcement otherwise contrary to public policy - Permissibility of imposing a condition on enforcement - Role of the courts - International Arbitration Act 1974 (Cth) s8(2), s8(7)(b) - UNCITRAL Model Law on International Commercial Arbitration, art 36(1)(b)(ii) - Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art V(2)(b).

EQUITY - Rescission of contract for the purchase of shares for fraudulent misrepresentation - Meaning of rescission - Whether consequential orders required to effect restitution - Revesting of equitable ownership of shares - *Spence v Crawford* [1939] 3 All ER 271 - *Alati v Kruger* (1955) 94 CLR 216 - *Kramer v McMahon* [1970] 1 NSW 194 - *Sons of Gwalia Ltd v Margaretic* (2007) 231 CLR 160.

Indian Farmers Fertiliser Cooperative Ltd; Kisan International Trading FZE v Gutnick, Joseph Isaac; Legend International Holdings, Inc

Croft J

[\[2015\] VSC 724](#)

21/12/2015

BUILDING CONTRACTS - Entitlement to final payment following issue of certificate of Practical Completion - Validity of certificate of Practical Completion issued under Deed of Settlement - Decision made by Principals not to set aside Certificate of Practical Completion - Whether an election between inconsistent rights - Whether gives rise to an estoppel - Construction of Deed of Settlement and related documents as commercial contracts.

CONTRACT - Construction of a commercial settlement under Deed of Settlement - Final instalment payable on issue of certificate of Practical Completion of building works - Certificate issued, but validity challenged - Whether final instalment payable - Whether an election between inconsistent rights - Whether gives rise to an estoppel - Construction of Deed of Settlement and related documents as commercial contracts.

Metier3 P/L v Enwerd P/L and S.H.L Nominees (1965) P/L (No 3)

Vickery J

[\[2015\] VSC 587](#)

21/10/2015

CIVIL PROCEDURE - Civil Procedure Act 2010 (Vic) s29 - Corporations, application pursuant to s459P of the Corporations Act - Duty of disclosure - Failure to serve application in accordance with order - Failure to disclose late service.

In the Matter of HEA Australia Pty Ltd between Australia Pressure Vessel Heads (2011) P/L (ACN 150 111 452) and HEA Australia P/L (ACN 104 888 397) and Locker Group P/L (ACN 004 353 922) (First Interlocutory Applicant) and KNM P/L (ACN 095 215 759) (Second Interlocutory Applicant)

Randall AsJ

[\[2015\] VSC 752](#)

18/12/2015

CONTRACT - Good faith - Enforceability of agreement to negotiate in good faith - Breach of obligation to act reasonably and in good faith - Relationship between obligation to act "reasonably" and obligation to act "in good faith" - *Burger King Corporation v Hungry Jack's Pty Ltd* (2001) 69 NSWLR 558 - Construction of commercial contracts - Terms implied in order to give business efficacy to agreement - Incorporation of terms of earlier agreement into subsequent agreement - Different named parties in subsequent agreement.

DAMAGES - Quantification of loss and damage - Lost opportunity to develop and lease land - Date at which damages are assessed - Capitalisation of Income method of valuation not the most appropriate method of estimating loss and damage - Discounted Cash Flow method of valuation - Sellers discount - *Sellers v Adelaide Petroleum NL* (1994) 179 CLR 332.

North East Solution P/L (ACN 129 466 851) v Masters Home Improvement Australia P/L (Formerly Shellbelt P/L) (ABN 21 066 891 307) (First Defendant) and Woolworths Ltd (ABN 88 000 014 675) (Second Defendant)

Croft J

[\[2016\] VSC 1](#)

28/01/2016

CORPORATIONS - Corporations Act 2001 (Cth) s232(d), s232(e), s233(1) - Oppression - Proposed dividend to be funded entirely by loan facility - Whether proposal contrary to the interests of the company - Whether proposal contrary to the interests of the members as a whole - Whether proposal oppressive to, unfairly prejudicial to, or unfairly discriminatory against minority shareholder - No finding of oppression made under s232.

CORPORATIONS - Corporations Act 2001 (Cth) s254T(1)(b) - Dividend - Proposed dividend is fair and reasonable to the company's shareholders as a whole.

KGD Investments P/L (ACN 124 032 515) v Placard Holdings P/L (ACN 156 456 941)

Almond J

[\[2015\] VSC 712](#)

11/12/2015

CORPORATIONS - Reinstatement of deregistered company - Whether applicant a "person aggrieved" - Exercise of discretion - Whether reinstatement just - Corporations Act 2001 (Cth) s601AH(2) - Company reinstated.

In the Matter of 164 Fyans Street P/L (ACN 153 001 515) (deregistered): Elsworthy, Sonja Ejvor v Australian Securities and Investments Commission

Derham AsJ

[\[2016\] VSC 14](#)

22/01/2016

DISCOVERY - Pre action discovery - Administration of trusts - Discretionary trusts - Beneficiary's questioning of appropriation of trust assets to his possible detriment - Concern whether ex directors of trustee procured breach of trust - "Reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court" - Standard of objective evidence or certainty required to attract Court's discretion - Interrelationship with the law of trusts concerning a beneficiary's right to information from trustee - Supreme Court (General Civil Procedure) Rules 2015, r32.05.

TRUSTS AND TRUSTEES - Discretionary trusts - Beneficiary's entitlement to information - Legal foundation for such an entitlement - Content and limitations of entitlement - Interrelationship with rules of court permitting pre action discovery of documents in prospective civil proceedings

Guest, Peter Bentley v Guest, Verna Anne, Walsh, Peter John

Mukhtar AsJ

[\[2015\] VSC 761](#)

22/12/2015

DISCOVERY - Pre action discovery of documents - Purpose of rule - Reasonable enquiries - Volunteering of confidential document by prospective defendants with redaction - Disavowal of possession of other documents - Limited order made - Supreme Court (General Civil Procedure Rules) 2015, r32.05

Orora Ltd (ACN 004 275 165) (and others according to the attached schedule) v Asahi Holdings (Australia) P/L (ACN 135 315 767) (and others according to the attached schedule)

Ierodiaconou AsJ

[\[2015\] VSC 749](#)

18/12/2015

PRACTICE AND PROCEDURE - Applications for costs against lawyers for alleged breaches of overarching obligations - Civil Procedure Act 2010 (the 'Act') s 29, s 30, s 31 - Application statute barred buy operation of s 30 of the Act - Applications pursuant to Rule 63.23 of the Supreme Court (General Civil Procedure) Rules 2015, that the Solicitors and the Barrister pay a party's costs of the proceeding - Summary dismissal of applications pursuant to s 63 of the Act - No real prospect of success - Whether Deed of Settlement executed by parties released and discharged a Barrister as agent of a party from costs orders being made against her.

Kenny, Caroline Majella v Gippsreal Ltd (ACN 076 779 630); Symonds, Ian & Associates v Gippsreal Ltd (ACN 076 779 630); Gippsreal Ltd (ACN 076 779 630) v Action Cycles P/L & Ors; Action Cycles P/L (Receivers and Managers Appointed) v Ross, David Anthony (in his Capacity as Receiver and Manager of Action Cycles Pty Ltd (Receivers and Managers Appointed) (No 2)

Vickery J

[\[2015\] VSC 737](#)

18/12/2015

PRACTICE AND PROCEDURE - Civil proceeding - Claim by employer alleging breach of contract of employment and confidentiality agreement by employee - Plaintiff suffered no compensable loss - Proceeding continued for nominal damages on point of modest principle - Plaintiff's costs around \$600,000 and defendant's costs exceeding \$300,000 - great disparity of resources between parties - Whether plaintiff contravened overarching obligation to ensure reasonable and proportionate costs - Whether court has power to dismiss proceeding rather than ordering nominal damages and should exercise it - Whether plaintiff unreasonably refused offers of settlement - Identifying the successful party where only nominal damages awarded - Whether plaintiff should be ordered to pay defendant's costs on indemnity basis - Discussion of importance of observance by parties of their overarching obligations and powers of court to make fundamental orders and costs orders by way of sanction when contravention established - Civil Procedure Act 2010 (Vic), s28 and s29, Supreme Court Act 1986 (Vic) s24, Supreme Court (General Civil Procedure) Rules 2005 (Vic) O 63.

Actrol Parts P/L (ACN 142 654 564) v Coppi, John (No 3)

Bell J

[\[2015\] VSC 758](#) (Revised 5 January 2016)

23/12/2015

PRACTICE AND PROCEDURE - Pleadings - Application for leave to amend statement of claim - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r36.01(1).

PRACTICE AND PROCEDURE - Security for costs - Delay - Past costs - Future costs - Discretion - Corporations Act 2001 (Cth), s1335(1), Supreme Court Rules, r62.02(1).

JZ Lee Interiors P/L (ACN 075 815 093) v Smith, Brendon Ashley & Anor; Vrapcenjack, Josip as trustee for the Vrapcenjack Family Trust & Anor v Smith, Brendon Ashley

Elliott J

[\[2015\] VSC 693](#)

08/12/2015

PRACTICE AND PROCEDURE - Security for costs - Defendant's counterclaim - Threshold question in dispute - Whether plaintiff had a sufficient measure of ability to pay costs - Whether undue delay in bringing application - Threshold question not established - Undue delay in bringing application - Security for costs not ordered - Supreme Court (General Civil Procedure) Rules 2005, r62.02(1), r62.04 - Corporations Act 2001 (Cth) s1335(1).

Amcor P/L (ACN 000 017 372) & Ors (according to the attached Schedule) v Barnes, Trevor Mark & Ors (according to the attached Schedule): Australian Corrugated Box Co P/L (ACN 104 489 581) (First Plaintiff by Counterclaim) and ACB Australia P/L (ACN 104 489 670) (Second Plaintiff by Counterclaim) v ACN 002 693 843 Box P/L (ACN 002 693 843) (First Defendant by Counterclaim) and AMCOR Packaging (Australia) P/L (ACN 004 275 165) (Second Defendant by Counterclaim)

Vickery J

[\[2015\] VSC 90](#)

13/03/2015

PRACTICE AND PROCEDURE - Third application on summons for leave to amend the statement of claim - Pleading defects now cured - Consideration of discretionary factors - Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175 applied - Delay - Initial absence of explanation - Nature of explanation when provided - Wasted costs - Failure to pay costs orders - Expanded trial - Likelihood of future costs and further delay to trial - Leave to amend granted on payment of outstanding costs orders.

PRACTICE AND PROCEDURE - Application for dismissal or stay for non-payment of costs - Consideration of Gao v Zhang (2005) 14 VR 380 - Consideration of discretionary factors - Stay ordered - Supreme Court (General Civil Procedure) Rules 2015 r63.03(3).

Rozenblit, Boris v Vainer, Michael and Vainer, Alexander (No 3)

Lansdowne AsJ

[\[2015\] VSC 731](#)

16/12/2015

PROCEDURE - Subpoena - Service in a foreign country - Application for leave under rule 7.06 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) - Jurisdiction of the Court to make such an order - Relevant considerations - Principles of international comity between nations - Inability to enforce the subpoena - Whether 'exceptional circumstances' exist to justify infringing the sovereignty of Singapore - Relevance of person subpoenaed agreeing to comply with the subpoena - Relevance that person subpoenaed is an Australian citizen, with family in Australia, is a barrister and solicitor of the Court and regularly visits Australia - Application refused.

In the Matter of AWB Ltd (ACN 081 890 459) between Australian Securities and Investments Commission (ASIC) v Flugge, Trevor James; In the Matter of AWB Ltd (ACN 081 890 459) between Australian Securities and Investments Commission (ASIC) v Geary, Peter Anthony (Ruling No 5)

Robson J

[\[2015\] VSC 665](#)

16/11/2015

SECURITY FOR COSTS - Ruling in relation to defendant's foreshadowed application for Security for Costs

Camping Warehouse Australia P/L (formerly Mountain Buggy Australia P/L) (ACN 097 355 578) v Downer EDI Ltd (ACN 003 872 848)

Digby J

[\[2016\] VSC 23](#)

28/01/2016

TORT - Inducement of breach of contract - Existence of contracts between the plaintiff and overseas suppliers - Defendants had a 'fairly good idea' of the existence of the contracts - Defendants intended to induce overseas suppliers to breach contracts with plaintiff - Breach of contract by overseas suppliers - Tortious conduct found - Assessment of quantum of damage.

EVIDENCE - Admissibility - Authenticity of documents - Whether documents business records - Evidence Act 2008 (Vic) s48(1)(e), s58, s69, s183.

Traffic Calming Australia P/L (ACN 160 258 471) v CTS Creative Traffic Solutions P/L (ACN 160 120 810) & Ors

Almond J

[\[2015\] VSC 741](#)

17/12/2015

TRUSTS AND TRUSTEES - Judicial advice - Trustee's right to indemnification from trust assets - Claim against trustee for knowing receipt of trust property abandoned - Plaintiffs ordered to pay Trustee's costs thrown away - Trustee advised that it is justified in accessing trust funds for purpose of undertaking limited role in defence of amended claim against it - Supreme Court (General Civil Procedure) Rules 2015 O 54.

In the Matter of an application by Olrey Pty Ltd (ACN 140 494 319) for judicial advice and directions under r54.02 of the Supreme Court (General Civil Procedure) Rules 2015 (No 2)

McDonald J

[\[2016\] VSC 18](#)

03/02/2016

Commercial and Equity Division

VEXATIOUS LITIGANT - Application for leave to commence legal proceedings - Proposed defendant given opportunity to be heard - Previous County Court proceedings - Res judicata - Issue estoppel - Abuse of process - A person may sue once for damages for injuries negligently sustained - Vexatious Proceeding Act 2014 s3 - Papercorp Pty Ltd v Nicolaou [2006] VSCA 143 - Arthur Robinson (Grafton) Pty Ltd v Carter (1968) 122 CLR 649 - Application refused.

In the Matter of an Application by Lindsay, David James under s54 of the Vexatious Proceedings Act 2014

Rush J

[\[2015\] VSC 316](#)

03/07/2015

Common Law Division

ADMINISTRATIVE LAW - Appeal against the findings and orders of an Associate Justice in relation to the Coroner's determination as to cause of death - Whether grounds of appeal raise a point of law - Consideration of error of law on the face of the record and procedural fairness - No point of law identified - Appeal dismissed - Coroners Act 2008 s3, s52, s67, s77, s83, s84 and s87 - Thales Australia Limited v The Coroners Court of Victoria & Ors [2011] VSC 133 - Commissioner of State Revenue v STIC Australia Pty Ltd & Anor [2010] VSC 608.

In the Matter of the death of the late Robena May Lloyd: Mortimer, Stephanie Lorraine (Sister) v West, Iain, West (in his role as Deputy State Coroner)

Rush J

[\[2016\] VSC 11](#)

28/01/2016

ADMINISTRATIVE LAW - Appeal from a decision of the Victorian Civil and Administrative Tribunal - Restricted Breed Standard - Declaration that dog not a restricted breed - Whether the Tribunal made an error of law - Whether ignoring concession made by one party constitutes an error of law - Whether open to Tribunal to ignore concession made by a party - Domestic Animals Act 1994 (Vic) - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s51, s148.

In the Matter of section 148 of the Victorian Civil and Administrative Tribunal Act 1998 between Wyndham City Council v Fenech, Simon

J Forrest J

[\[2015\] VSC 723](#)

17/12/2015

ADMINISTRATIVE LAW - Application for leave to appeal on questions of law - Victorian Civil and Administrative Tribunal declined to make orders cancelling the respondent's license to operate a brothel - Sex worker working on premises in breach of visa conditions - Whether Tribunal erred in not being satisfied that an indictable offence had been committed on brothel premises - No error of law - Application for leave to appeal dismissed.

Director of Consumer Affairs Victoria v Meng, Xian Yan

McDonald J

[\[2015\] VSC 668](#)

14/12/2015

ADMINISTRATIVE LAW - Judicial review - Certiorari - Permanent stay of prosecutions for theft granted by Magistrates' Court - Previous unsuccessful contempt proceedings in VCAT - Autrefois acquit the basis for permanent stay - Whether error on the face of the record - R v Carroll (2002) 213 CLR 635 distinguished.

Director of Public Prosecutions v Giurina, Ermanno and the Magistrates' Court of Victoria

Coghlan JA

[\[2016\] VSC 15](#)

29/01/2016

ADMINISTRATIVE LAW - Judicial review - Medical Panel - Jurisdictional error.

In the Matter of the Accident Compensation Act 1985; Boynes, Philip v Brown Group Personnel P/L & Ors

Riordan J

[\[2015\] VSC 702](#)

24/12/2015

ADMINISTRATIVE LAW - Judicial review - Property registered on Victorian Heritage Register - Circumstances of inclusion - Conservation Management Plan - Application for order that property be removed from Register - Executive Director Heritage Council - Whether failure to perform a duty - Historic Buildings Act 1981 s17, s18, s26; Heritage Act 1995 s18, s19, s54, s67, s73, s160, s161.

DECLARATIONS - Obligations and liabilities of owner of place on Victorian Heritage Register for maintenance of house and condition of house - Application for declarations as to owner's responsibilities and liabilities - Whether declarations hypothetical.

Rajendran, Maria Joanne v Heritage Council, The Executive Director Employed Under Part 2 of the Heritage Act 1995 (Vic)

Ginnane J

[\[2015\] VSC 732](#)

17/12/2015

ADMINISTRATIVE LAW - Offences whilst in prison - Judicial review - Certiorari and mandamus sought in respect of the laying of charges by prison officers for prison offences and findings of guilt made by prison governor - Whether prisoner denied procedural fairness in the laying of the charges and at hearing - Relief refused - Corrections Act 1986 (Vic) s21, s23, s50, s53 - Corrections Regulations 2009 (Vic) regs 50, 51.

Kotzmann, Thomas Samuel v Prison Supervisor E. Wang & Ors according to the schedule attached

Macaulay J

[\[2015\] VSC 760](#)

23/12/2015

BREACH OF CONTRACT - Terms of employment - Retention plan - Agreements concerning Retention Bonus - Termination of employment - Discretion of the Board of Directors to pay under a Retention Plan in "special circumstances" - Actionable representations.

MISLEADING AND DECEPTIVE CONDUCT - Alleged representations made on 23 August 2012 - Alleged representations as to the nature of terms and conditions of employment - Australian Consumer Law s4 and s236.

ESTOPPEL - Alleged representations that employee was terminated as a result of redundancy - Whether employee relied upon those representations - Whether employee suffered damage as a result

Stevens, Anthony v Spotless Management Services P/L (ACN 099 129 790)

Digby J

[\[2015\] VSC 746](#)

10/12/2015

CONTEMPT - Client legal privilege - Loss of privilege by commission of fraud - Email from solicitor on record to client - Private correspondence - History of client's defiance of court orders and authority - Whether conduct of solicitor encouraged further disregard for Court's orders and authority.

In the Matter of an application for contempt of Court made by Alexandra Ann Bennett, Martin Thorburn Jan Talacko and Rowena Kirsten Eve Talacko; and Alexandra Ann Bennett and David John Adams (as Executors of the Estate of Margaret Helen Beatrice Talacko): The Queen v Witt, Michael Geoffrey

J Forrest J

[\[2016\] VSC 19](#)

01/02/2016

DISCOVERY - Application to examine deponent of affidavit of documents under s57 of the Civil Procedure Act 2010 (Vic) - Application for specific discovery under the Supreme Court (General Civil Procedure) Rules 2015 - Application refused - Interrogatories ordered.

Mullett, Paul Redmond v Nixon, Christine and Walshe, Kieran and Wayne, Taylor

J Forrest J

[\[2015\] VSC 727](#)

16/12/2015

ENVIRONMENT PROTECTION ACT 1970 - Whether statutory duty under s45(1) not to cause pollution - Whether municipality liable under s62A(2) as person causing pollution or appearing to abandon industrial waste - Whether liability extends to pollution caused prior to commencement of the Act - Municipality liable for costs incurred complying with clean up notice.

NEGLIGENCE - Duty of care owed by planning authority to applicant for planning permit - Duty of care of person contaminating land to subsequent purchaser - Duty of care to subsequent purchasers to disclose contamination - Duty of care to subsequent purchasers to ensure contractor complies with contractual terms - Attribution of knowledge of former employees and as contained in historical records - Claims for economic loss or property damage - Salient features in novel duties of care *Caltex Refineries (Qld) Pty Ltd v Stavar* (2009) 75 NSWLR 649 - Duties not established.

STATUTORY INTERPRETATION - Whether successor municipality liable for claims that were incomplete at succession date.

Metropolitan Fire and Emergency Services Board v Yarra City Council and Ors

Riordan J

[\[2015\] VSC 773](#)

24/12/2015

GROUP PROCEEDINGS - Supreme Court Act 1986 (Vic) s33V - Discontinuance of group proceedings - Whether undertaken in the interests of the group members as a whole - Relevant factors - Whether court should approve discontinuance - Discontinuance approved.

Pendrigh, Duncan v EX ABA Ltd (Formerly Australian Bight Abalone Ltd) (ACN 110 06 483) & Ors (according to the Schedule attached)

Derham AsJ

[\[2015\] VSC 719](#)

14/12/2015

JUDICIAL REVIEW AND APPEAL - Appeal from the Victorian Civil and Administrative Tribunal on a question of law - Appeal dismissed - Building contract relied upon by the plaintiffs not in evidence before VCAT, and not established as a valid and enforceable contract - Section 31(2) of the Building Contracts Act 1993 (Vic).

CONTRACT - Domestic building contracts - *Lumbers v W Cook Builders Pty Ltd* (in liquidation) (2008) 232 CLR 635 considered - Legal obligations of the parties established by the terms of the contract, not the actual commercial arrangements of the parties - Obligations of builder assumed under contract - Building contract not discharged by later agreement.

Fraser, Maureen and Fraser, Desmond Thomas v Sperling, Guntram and Kastner, Heidi

Daly AsJ

[\[2015\] VSC 698](#)

11/12/2015

JUDICIAL REVIEW AND APPEALS - Application for leave to appeal pursuant to Section 148 of the Victorian Civil and Administrative Tribunal (VCAT) Act 1998 (Vic) - Procedural fairness - Self-represented litigants with a poor command of English - Application of the rule in *Jones v Dunkel* where a party is unrepresented - Whether trial judge provided fair warning to plaintiffs of consequences of not calling witness to give evidence - Tribunal member adopted *Jones v Dunkel* inferential reasoning - *Downes v Maxwell Richard Rhys & Co* (2014) 313 ALR 383, *Muto v Secretary to the Department of Transport, Planning and Local Infrastructure & ors* [2014] VSC 619 and *Comaz (Aust) Pty Ltd v Commissioner of State Revenue* [2015] VSC 294 applied - Error of law - Failure to provide adequate assistance - Breach of procedural fairness - Leave to appeal granted - Appeal allowed.

PRACTICE AND PROCEDURE - Procedural fairness - Whether tribunal member's refusal to allow the plaintiffs to have legal representation at the VCAT hearing and direction to the plaintiffs to sit at the back of the hearing room for a period of time created an apprehension of bias or amounted to a breach of procedural fairness - Intervention of judicial officer in the presentation of evidence - Whether tribunal member failed to take into account relevant considerations and took into account irrelevant considerations - No denial of procedural fairness - No error of law.

Wej, Chen and Xia, Qi Yun v Yu, Na

Daly AsJ

[\[2015\] VSC 726](#)

22/12/2015

JUDICIAL REVIEW - Legal practitioners - Professional misconduct by solicitor - Duty of candour - Application for leave to appeal a decision of the Victorian Civil and Administrative Tribunal (VCAT) - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148 - Application treated as hearing of appeal - Whether VCAT reasons were inadequate as failing to disclose path of reasoning - Failure to take relevant considerations into account - Acting beyond jurisdiction - Procedural fairness - Appeal dismissed.

Harle, Matthew Douglas v McGarvie, Michael Keith, Victoria Legal Services Commissioner

Zammit J

[\[2015\] VSC 697](#)

16/12/2015

JUDICIAL REVIEW - Jurisdiction - Sentencing - Order for diversion - Consent as precondition for ordering diversion - Criminal Procedure Act 2009 (Vic), s59 - Orders quashed - Remitted back to County Court.

Director of Public Prosecutions (Barry-Bassett, Jason) v Venier-Moro, Jamane and the County Court of Victoria

J Forrest J

[\[2015\] VSC 704](#)

15/12/2015

JUDICIAL REVIEW - Jurisdictional error - Applications for legal assistance - Applicant aged 44 years and a convicted murderer already serving a sentence of imprisonment for life with a non-parole period ending in 35 years - In three trials for other offences, applicant subsequently sentenced by County Court to new non-parole period ending in 43 years (beyond his likely life expectancy) - Two of three appeals likely to be successful, resulting in reduction of new non-parole period to about 40 years - Decision of independent reviewer rejecting legal assistance for appeals against convictions and sentences to Court of Appeal - Whether legally unreasonable - Whether irrelevant considerations taken into account - Whether legally open to find, and take into account, that applicant would probably not get parole in about 40 years - Whether impermissible speculation - Discussion of principle of objective and non-arbitrary consideration of applications - Legal Aid Act 1978 (Vic) s24(1) and (4), Charter of Human Rights and Responsibilities Act 2006 (Vic) s25(2) and s25(4), s38(1).

Bayley, Adrian Ernest v Nixon, John (in his capacity as an independent reviewer appointed pursuant to s18 of the Legal Aid Act 1978 (Vic)) and Victoria Legal Aid
Bell J

[\[2015\] VSC 744](#)

18/12/2015

JUDICIAL REVIEW - Legal practitioners - Professional misconduct by solicitor - Duty of candour - Application for leave to appeal a decision of the Victorian Civil and Administrative Tribunal (VCAT) - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148 - Application treated as hearing of appeal - Whether VCAT reasons were inadequate as failing to disclose path of reasoning - Failure to take relevant considerations into account - Acting beyond jurisdiction - Procedural fairness - Appeal dismissed.

Harle, Matthew Douglas v McGarvie, Michael Keith, Victoria Legal Services Commissioner

Zammit J

[\[2015\] VSC 697](#)

16/12/2015

LIMITATION OF ACTIONS - Strike out - Postponement of the running of the limitation period for breach of contract - Whether concealment of the reasons for a breach of contract known to the plaintiff to have occurred is concealment of the right of action - Section 27(b) Limitation of Actions Act 1958.

ESTOPPEL - Strike out - Whether the plaintiff has pleaded any departure from a previous representation.

UNCONSCIONABLE CONDUCT - Strike out - Whether pleaded independently of estoppel - Whether damages are sought as a remedy.

Harris, Rodney v AAL Aviation Ltd (ACN 008 642 886); Commonwealth of Australia

Lansdowne AsJ

[\[2015\] VSC 602](#)

04/11/2015

NEGLIGENCE - Application for approval of infant compromise under the Supreme Court (General Civil Procedure) Rules 2015, Order 15 - Relevant test to apply on application for approval - Compromise approved - Elderfield v Transport Accident Commission [2010] VSC 116.

Laracy, Francis Edward & Ors v Baxters Concrete P/L

T Forrest J

[\[2015\] VSC 776](#)

08/12/2015

NEGLIGENCE - General damages - Whether interest payable on pain and suffering damages - Supreme Court Act 1986 s60 - Accident Compensation Act 1985 s134AB, s135C - Eccles v Taylor [1995] 2 VR 482 - Williams v Oatway [2004-05] 11 VF 529.

Starr v Greenfreight (Services) P/L

T Forrest J

[\[2015\] VSC 759](#)

22/12/2015

NEGLIGENCE - Plaintiff contracted mesothelioma - Exposure to asbestos dust and fibre in the course of employment - Each of the first, third and fourth defendants seek contribution against the other - Principles of contribution and apportionment between the employer and the manufacturer/supplier of asbestos products - Wrongs Act 1958 pt IV - Podrebersek v Australian Iron and Steel Pty Ltd (1985) 59 ALR 529 - Jones v Southern Grampians Shire Council & Anor [2012] VSC 485 - Roads and Traffic Authority of NSW v Dederer (2007) 234 CLR 330.

Zwiersen, Maarten v Field & Hall P/L (ACN 004 391 324), AEC Contracting (Vic) P/L (ACN 004 522 650), AMACA P/L (ACN 000 035 512) (Formerly James Hardie & Coy P/L), CSR Ltd (ACN 00 001 276)

Rush J

[\[2016\] VSC 16](#)

29/01/2016

PERSONAL INJURY - Negligence - Abuse, bullying and sexual harassment in the workplace - Psychiatric injury - Damages - Past economic loss - Future economic loss - General damages.

Mathews, Kate v Winslow Constructors (Vic) P/L

T Forrest J

[\[2015\] VSC 728](#) First Revision: 22 December 2015; paragraph [20]

17/12/2015

PRACTICE AND PROCEDURE - Application for summary dismissal pursuant to Supreme Court (General Civil Procedure) Rules 2015 and s63 of the Civil Procedure Act 2010 - Relief seeking merits review beyond Court's jurisdiction - Relief sought in the nature of certiorari hopeless - Relief seeking a declaration under Charter of Human Rights and Responsibilities Act 2006 beyond Court's jurisdiction - Plaintiff's draft amended originating motion vexatious and embarrassing.

Garrett, Andrew Morton v The Legal Services Commissioner; Daily, Russell

Riordan J

[\[2015\] VSC 772](#)

24/12/2015

PRACTICE AND PROCEDURE - Amendment of pleading - Plaintiff claimed reputational damage and loss of business from conduct of defendants that was misleading or deceptive - Fifteen separate statements posted on product review website by defendants - Pleading makes claims about publications separately and as a composite group - Whether inferential circumstances of internet publication adequately pleaded - Whether adequate causal nexus alleged between reliance and the type of loss pleaded - Whether loss adequately pleaded - Whether composite claim against publications adequately pleaded - Adequacy of particulars - Australian Consumer Law s 236(1)(a)

Clark, Leighton Moore and Harmonious Blend Building Corporation P/L v Ibrahim, Michael and Adams, Bethany

Dixon J

[\[2015\] VSC 301](#)

24/06/2015

PROCEEDS OF CRIME - Applications for examination orders - Application to vacate trial date - Delay - Exercise of a broad discretion - Proceeds of Crime Act 2002 (Cth) s180, s180A, s180B.

Commissioner of the Australian Federal Police v Dong Hua International Investments P/L and Zhou, Yu Hong

T Forrest J

[\[2015\] VSC 748](#)

18/12/2015

REAL PROPERTY - Restrictive covenant - Application for modification - Applicable legal principles - Covenant that "no building other than one private dwelling-house of brick or brick veneer with roof of tiles" shall be erected on the land - Whether modification will not substantially injure the persons entitled to the benefit - Application granted - Property Law Act 1958 s84(1)(c)

Maclurkin, Rachel Sheila Kathleen Campbell v Searle, Anthony John

Derham AsJ

[\[2015\] VSC 750](#)

18/12/2015

SENTENCING - Jurisdictional limit of two years' imprisonment applicable to indictable offences heard and determined summarily by the Magistrates' Court - Whether sentences imposed in respect of the relevant charges complied with limit - Consideration of aggregate sentencing - Matters remitted to the Magistrates' Court for re-hearing - Sentencing Act 1991 s9, s113, s113A and s113B - Criminal Procedure Act 2009 s28 - Oleyar v R [2015] VSCA 134.

Finn, Bradley William v Wallace, Nicholas St James and Finn, Bradley William v Stewart, Fergus Christopher

Rush J

[\[2016\] VSC 10](#)

28/01/2016

SUCCESSION LAW - Application by purported creditor of deceased for grant of letters of administration upon intestacy - Whether applicant a creditor of the deceased - If applicant is a creditor, whether applicant can rely on entire debt or only that part which is not statute barred - *Midgley v Midgley* [1893] 3 Ch 282 - *In re Rowson*; *Field v White* (1885) 29 Ch D 358 - *Coombs v Coombs* (1866) LR 1 P & D 288

In the Matter of the estate of Mayes, John Lewin, deceased: Application by: O'Reilly, William Lindley

McMillan J

[\[2015\] VSC 708](#)

18/12/2015

TORTS - Allegations of battery committed by prison officers employed at the Melbourne Remand Centre - Three separate incidents - Physical contact admitted by the prison officers - Whether or not physical contact was lawful - Physical contact not unlawful - Physical contact reasonable, appropriate and necessary - No award of damages - *Slaveski v State of Victoria & Ors* [2010] VSC 441 - *Zecevic v Director of Public Prosecutions* (1987) 162 CLR 645 - *Watkins v State of Victoria & Ors* (2010) 27 VR 543 - *Corrections Act 1986* s23.

Russell, John Paton v Corrections Officer Reid; Corrections Officer Tomkinson; Corrections Officer Paton; State of Victoria; Corrections Officer Payne

Rush J

[\[2015\] VSC 729](#)

16/12/2015

TRUSTS - Discretionary trust - Questions asked by executor - Whether person had assumed office as guardian of trust - Evidence that person had not assumed office - Questions answered accordingly - Supreme Court (General Civil Procedure) Rules 2005 R 54.02. COSTS - Executor's proceeding seeking answers to questions concerning estate - Entitlement of beneficiaries to order for legal costs - Fund from which costs to be paid.

In the Matter of the Will and Estate of Moszkowicz, Jacob, deceased and In the Matter of the Moszkowicz Family Trust No 2 and the Moszkowicz Family Trust No 3 and In the Matter of an application pursuant to Rule 54.02 of the Supreme Court (General Civil Procedure) Rules 2005 for the determination of questions arising in the administration of the said estate and the said trusts: Between Orlanski, Henry Joseph (who sues as the Executor of the Will and Estate of Moszkowicz, Jacob, deceased) and others (according to the attached schedule) v Spiegel, Dina and others (according to the attached schedule) (No 2)

Ginnane J

[\[2015\] VSC 709](#)

09/12/2015

VALUATION OF LAND - Municipal valuation - Site value - Port of Melbourne - Treatment of occupancies - Whether occupancies to be valued as stand-alone parcels - Whether occupancies 'form part of' a 'larger property' - Whether reclamation works are 'works relating to a port' - Meaning of 'associated works' - Meaning of 'apron' in the context of a port - Valuation of Land Act 1960 s2(3), s2(2AA).

VALUATION OF LAND - Review of disallowance objections - Application to Victorian Civil and Administrative Tribunal - Order that application to Victorian Civil and Administrative Tribunal be treated as appeal to the Supreme Court - Valuation of Land Act 1960 s23(3).

Port of Melbourne Corporation v Melbourne City Council and Valuer General Victoria

Emerton J

[\[2015\] VSC 714](#)

11/12/2015

VEXATIOUS LITIGANT - Leave sought to continue proceedings in three costs orders matters - No material capable of supporting or justifying the exercise of the Court's discretion to grant leave - Leave refused - Attorney General (Vic) v Weston [2004] VSC 314 - Vexatious Proceedings Act 2014 s55 and s63(1).

The ANZ Executors and Trustee Company Ltd (as Trustees of the Estate of John William Shaw, Deceased) v Shaw, Brian William; The ANZ Executors and Trustee Company Ltd (as Trustees of the Estate of John William Shaw, Deceased) v Shaw, Brian William; The ANZ Executors and Trustee Company Ltd (as Trustees of the Estate of John William Shaw, Deceased) v Shaw, Brian William

Rush J

[\[2015\] VSC 288](#)

17/06/2015

WILLS & ESTATES - Court authorisation for the making of a statutory will - Propositus lacks testamentary capacity - Where applicant is the attorney for the propositus - Where proposed statutory will seeks to exclude husband - Where propositus and husband have entered into a matrimonial property settlement but are not legally separated - Wills Act 1997, s21, s21A, s21B - Supreme Court (Miscellaneous Civil Proceedings) Rules 2008, O 17 - Re Fenwick [2009] NSWSC 530 - Saunders v Pedemont [2012] VSC 574 - Bailey v Richardson [2015] VSC 255

In the Matter of the last will and testament of Gillam, Murna Phoebe and In the Matter of section 21 of the Wills Act 1997

McMillan J

[\[2016\] VSC 5](#)

21/01/2016

WILLS AND ESTATES - Construction of wills - Construction and effect of testamentary disposition - Entitlement of beneficiary - Discretionary testamentary trusts - Supreme Court (General Civil Procedure) Rules 2005, O54.02 - Fell v Fell (1922) 31 CLR 268 - Butlin v Butlin (1966) 113 CLR 353

De Bruyn, Gary Michael (as executor of the Will and trustee of the estate of Gerrit Pieter De Bruyn, deceased)

McMillan J

[\[2015\] VSC 6](#)

22/01/2016

WILLS AND ESTATES - Defendant seeking distribution from deceased's estate as an unregistered domestic partner - Deceased in a relationship with another woman for seven months prior to his death - Defendant and deceased not living together for at least six months prior to deceased's death - Deceased not committed to relationship with the defendant at time of death - Application dismissed.

LEGAL PRACTITIONERS - Whether counsel for defendant had proper factual foundation for statements made during opening submission - Concessions made by defendant's counsel during final submissions inconsistent with critical aspect of defendant's evidence - Whether plaintiff provided instructions to her counsel to cross examine defendant on a basis known to be false - Obligations of counsel when acting for client with limited intellect, poor literacy skills and limited financial means.

Administration and Probate Act 1958 s3 and s51

Relationships Act 2008 s35(2)

Civil Procedure Act 2010 s18, s20, s21 and s29.

In the Matter of of the Estate of Manilo, Romano Peter, deceased and In the Matter of an Application for Letters of Administration ad colligendum bona Between Stagliano, Lisa Nicole (as the Administrator of the Estate of Manilo, Romano Peter, deceased) v Scerri, Maria

McDonald J

[\[2015\] VSC 733](#)

21/12/2015

Criminal Division

BAIL - Application for bail - Exceptional circumstances demonstrated - Strength of Crown case - Delay between 21 and 24 months - Personal circumstances of applicant - Opportunity for inpatient rehabilitation program placement, treatment of untreated mental illness and employment - Unacceptable risk not demonstrated in context of strict conditions - Bail granted - Bail Act (1977) s 4(2)(aa)(ia), s 4(2)(d)

Director of Public Prosecutions v Mourkakos, Peter

John Dixon J

[\[2015\] VSC 775](#) First Revision: 2 February 2016

17/12/2015

CRIMINAL LAW - Application for bail - Theft of motor vehicle - Burglary - Attempted theft of Motor Vehicle and Criminal Damage - Armed Robbery - Offences committed while on bail for Armed Robbery, Robbery and Theft - Show cause position - Child accused - Suitability of accommodation if bail granted - Engagement with Youth Support services - No prior convictions - Bail granted with conditions.

The Queen v NH

T Forrest J

[\[2015\] VSC 227](#)

15/05/2015

CRIMINAL LAW - Application for compensation under s85B of the Sentencing Act 1991 (Vic) - Offence of murder - Applicant is mother of the deceased - Pain and suffering direct result of offending - Psychiatric injury direct result of offending - Future medical expenses - Quantum - Rehabilitation - Financial circumstances of offender.

Adams, Jo-Anne v Xypolitos, John

T Forrest J

[\[2015\] VSC 747](#)

18/12/2015

CRIMINAL LAW - Bail application - Exceptional circumstances - Application for bail granted.

In the Matter of the Bail Act 1977 and In the Matter of an Application for bail by Debresay, Mussie

Jane Dixon J

[\[2015\] VSC 756](#)

18/12/2015

CRIMINAL LAW - Bail - Applicant aged 14 - Show cause situation - Cause shown - Risk of offending whilst on bail not unacceptable on strict conditions - Application granted.

In the Matter of the Bail Act 1977 (Vic) and In the Matter of an Application for bail by AW

Jane Dixon J

[\[2015\] VSC 722](#)

09/12/2015

CRIMINAL LAW - Bail - Applicant aged 17 - Show cause situation - Unacceptable risk of offending on bail - Bail Act 1977 (Vic) s4(2)(d), s4(3), s4(4).

In the Matter of the Bail Act 1977 (Vic) and in the Matter of an Application for Bail by AA

Jane Dixon J

[\[2015\] VSC 700](#)

08/12/2015

CRIMINAL LAW - Bail - Handling stolen goods and dealing with the proceeds of crime - Applicant required to 'show cause' - Whether detention justified - Whether unacceptable risk - Previous refusal of bail - New facts and circumstances - Bail refused - Bail Act 1977 s4(2)(d)(i), s4(4)(a), s18, s18AA.

In the Matter of the Bail Act 1977 and In the Matter of an Application for Bail by Salievski, Lirim (No 2) (Bail Application)

Priest JA

[\[2015\] VSC 753](#)

18/12/2015

CRIMINAL LAW - Bail - Murder - No exceptional circumstances - Bail refused.

In the Matter of the Bail Act 1977 and In the Matter of an Application for Bail by Lacey, Andrew David

Priest JA

[\[2015\] VSC 611](#)

05/11/2016

CRIMINAL LAW - Evidence - Admissions - Record of interview - Application of Evidence Act 2008 (Vic) s85 and s90 - Whether or not circumstances of admission make it unlikely that the truth of admission adversely affected - Reliability - Whether or not it would be unfair to the accused to use evidence of the admission - Whether or not accused psychotic at time of record of interview - Whether or not mental state of accused likely to affect reliability of admissions - Record of interview excluded.

The Queen v Munday, Gareth (Ruling No 1)

T Forrest J

[\[2016\] VSC 26](#)

03/02/2016

CRIMINAL LAW - Murder - Compensation - Application for leave to leave to apply out of time for compensation order pursuant to s85D and s85B of the Sentencing Act 1991 - Applicants mother, father and sister of deceased - Interests of justice favour short extension of time - Pain and suffering direct result of offending - Psychiatric injury direct result of offending - Quantum - Rehabilitation - Financial circumstances of offender.

Moresco, Madelena v Moresco, Gabriel and Moresco, Delia v Budimir, Mark

T Forrest J

[\[2015\] VSC 51](#)

25/02/2015

CRIMINAL LAW - Murder - Manslaughter - Affray.

The Director of Public Prosecutions v Dimitrovski, Peter John; The Director of Public Prosecutions v Dimitrovski, Robert James; The Director of Public Prosecutions v Pearce, John Henry

Coghlan JA

[\[2015\] VSC 715](#)

20/11/2015

CRIMINAL LAW - Murder - Sentence after trial - 17 years' imprisonment with a non-parole period of 14 years.

The Queen v Christie, Paul Steven

COGHLAN JA

[\[2015\] VSC 769](#)

22/12/2015

CRIMINAL LAW - Sentence - Intentionally causing serious injury - Possessing firearm whilst prohibited - Reckless conduct endangering life - Cultivation of narcotic plants - A and K in dispute over remarks A's sister made to others about K - K threatened to snap A's sister's neck - A, in possession of a sawn-off shot-gun while prohibited, fired the gun at K, causing him serious injury - G encouraged A to fire again, which A did, the shot striking K's car as he fled - G grew ten cannabis plants for friend - Pleas of guilty - Remorse - Prior convictions - Good or very good prospects of rehabilitation - A committed offences while on parole - A serving balance of parole sentence at time of sentence - G served 41-day sentence for another matter while awaiting trial for present offences - Totality - A sentenced as "serious offender" on intentionally causing serious injury - Sentencing purposes of general deterrence, specific deterrence, denunciation, protection of the community, just punishment and rehabilitation all relevant - A sentenced to total effective sentence of five years' imprisonment with non-parole period of three years - G sentenced to total effective sentence of two years and ten months' imprisonment with non-parole period of 17 months - Crimes Act 1958 (Vic), s15, s16 & s22; Firearms Act 1996 (Vic), s3(1) & s5(1); Drugs, Poisons and Controlled Substances Act 1981 (Vic), s72B; Sentencing Act 1991 (Vic), s5, s6D(a), s6E, s15 & s16(3B).

The Queen v Afacan, Tugay (First Accused) and Ghanim, Sanar (Second Accused)

Croucher J

[\[2015\] VSC 755](#)

18/12/2015

CRIMINAL LAW - Murder - Sentence - Joint criminal enterprise - One plea of guilty - Two trials - Whether each intended to kill or cause really serious injury - Conclusion of that issue for sentence - Failed relationship - Family law litigation - Planning of abduction and killing - Concealment of body - Co-operation with police - Serious violent offender - No disproportionate sentence.

The Queen v Lindholm, Robyn; Trabert Torsten; Ryan, John

Lasry J

[\[2015\] VSC 739](#)

17/12/2015

CRIMINAL LAW - Sentence - Manslaughter - Plea of guilty - Traumatic childhood - Refugee - Post-traumatic stress disorder - Cognitive impairment - Reduced moral culpability - Verdins applied - Discount for providing assistance to authorities.

The Queen v Ajil, Raad

Beale J

[\[2015\] VSC 725](#)

15/12/2015

CRIMINAL LAW - Sentence - Murder - 27 years' imprisonment - Non-parole period of 21 years.

The Queen v Bradley, Steven

Osborn JA

[\[2015\] VSC 768](#)

22/12/2015

CRIMINAL LAW - Sentence - Murder - Arson - Offender assaulted deceased several times and then set fire to the garage where the body was located - Difference between intention to kill and intention to causing really serious injury - Whether arson treated as aggravating factor of murder or separate offence - Relevance of accused personality disorder to moral culpability.

Director of Public Prosecutions v Thomas, Collin Orman

J Forrest J

[\[2016\] VSC 8](#)

29/01/2016

CRIMINAL LAW - Sentence - Murder - Domestic Violence - Early guilty plea - Whether remorse - Mental state - Whether principles in Verdins [2007] VSCA 102 applicable - Prospects of deportation - Baseline sentencing provisions in the Sentencing Act 1991 not applicable - DPP v Walters [2015] VSCA 303.

The Queen v Singh, Parminder

Lasry J

[\[2015\] VSC 738](#)

17/12/2015

CRIMINAL LAW - Sentence - Murder - Joint criminal enterprise - Serious example of murder - Evidence of remorse - Plea of guilty - Utilitarian discount - Discount for undertaking to give Crown evidence against co-accused.

The Queen v Tepsut, Teparat

Beale J

[\[2015\] VSC 399](#)

07/08/2015

CRIMINAL LAW - Sentence - Murder - Joint criminal enterprise - Serious example of murder - Killing was payback for intervention by "good Samaritan" - Parity considerations - Pre-sentence detention includes time spent in gaol overseas - Sentencing Act 1991 s18(1).

The Queen v Terdputham, Thatiya; Seehaverachart v Sarud

Beale J

[\[2015\] VSC 740](#)

17/12/2015

CRIMINAL LAW - Sentence - Murder - Two charges - Baseline sentencing - Provisions not applied - Intentionally cause injury - False imprisonment - Pleas of guilty - Early plea - Offences committed after failed relationship - Mental state of the offender - Personality disorder - Adjustment disorder - Moral culpability - Extent of effect on offending - Verdins - Remorse - Prospect of deportation - Totality.

The Queen v Liao, Cia Xia

Lasry J

[\[2015\] VSC 730](#)

17/12/2015

PROCEDURE - Application for change of venue - Pre-trial publicity - Adequacy of arrangements for accommodation of accused during trial.

In the Matter of section 192 of the Criminal Procedure Act 2009 and In the Matter of an application by Bradley, Steven for a change of venue of the trial venue from Shepparton to Melbourne: The Queen v Bradley, Steven (Ruling No 1)

Osborn JA

[\[2015\] VSC 257](#)

05/06/2015

Practice Court

CAVEAT - Removal of caveat - Claim for equitable interest by caveator - Undertakings given by legal owner to court to sell property - Undertakings largely complied with by legal owner - Serious issue to be tried - Balance of convenience favours removal - Caveat removed.

Brett Grimley Sales P/L (ACN 006 222 046) v Petrovic, Goran (Defendant); Petrovic, Dragan (Claimant) and Petrovic, Goran v Petrovic, Dragan; Registrar of Titles

Garde J

[\[2015\] VSC 716](#)

09/12/2015

PRACTICE AND PROCEDURE - Injunction - Construction dispute - Payment claims - Enforcement of adjudication determination - Building and Construction Industry Security of Payment Act 2002 (Vic), Division 2B, s3, s28 - Serious question to be tried - Balance of convenience favours granting of injunction.

Milburn Lake P/L (trading as Irwin Stockfeeds) (ACN 050 462 381) v Andritz P/L (ACN 000 160 832) and Wilson, Simon (in his capacity as adjudicator appointed under section 20(1) of the Building and Construction Industry Security of Payment Act 2002 (Vic))

J Forrest J

[\[2016\] VSC 3](#)

13/01/2016

PRACTICE AND PROCEDURE - Vexatious litigant - Application for leave to commence proceedings - Applicant a prisoner under sentence - Proposed proceeding a VCAT review of FOI decision - Whether proposed proceeding vexatious - Whether reasonable grounds for proposed proceeding - Vexatious Proceedings Act 2014 s55, s56.

Knight, Julian v Department of Justice

T Forrest J

[\[2016\] VSC 7](#)

27/01/2016

PROCEDURE - Confiscation of proceeds of crime - Application for restraining order, examination order and ancillary orders - Ex parte application for restraining order, ancillary order and examination order - Risk of disposal of funds sought to be restrained - Appropriateness of proceeding ex parte with respect to the examination order and ancillary order - Appropriateness of submission that ex parte orders for examination 'routine' - Examination and ancillary orders not granted.

In the Matter of the Proceeds of Crime Act 2002 (Cth); and In the Matter of property suspected of being proceeds of serious offences; and In the Matter of the suspect, MNO; and In the Matter of an Application by the Commissioner of the Australian Federal Police

Riordan J

[\[2015\] VSC 774](#)

15/12/2015

County Court of Victoria Cases

Following is a selection of cases recently handed down in the County Court of Victoria. These cases have been selected for inclusion by the presiding judge. If you would like your judgment added to the Library Bulletin, please email the reference librarian in your jurisdiction

INTERLOCUTORY INJUNCTION - Agreement to enter into shares sale agreement - Agreement drafted as a deed but not executed by all parties - Part performance by payment of deposit - Whether share sale agreement entered into - Whether interlocutory injunction should be granted to restrain sale of shares to a third party - Plaintiff a Cypriot company with no assets in Australia - Whether plaintiff should provide security for the undertaking as to damages.

Anyoption Holdings Ltd v. Nurisvan Investment Ltd & Anor

Judge Anderson

[\[2015\] VCC 1872](#)

18/12/2015

Articles

Aboriginals

Children - Removal from Aboriginal communities - Stolen generation - Fiduciary duties - Reconciliation - Consent - Collard v State of Western Australia [No 4] - Supreme Court - WA - Australia

Moore, R. Collard v Western Australia: stolen generations victims fail to achieve justice. (2015) 21(1) AJHR 97-118

Land rights - Native title - Settlement of native title interests - Alternative process to Native Title Act 1993 (Cth) - State-based recognition of traditional owners - Framework agreements - Land Use Activity Regime - Natural resource management - Traditional Owner Settlement Act 2010 (Vic) - Victoria - Australia

Harden, D. The land use activity regime: a Victorian alternative to future Acts under the Native Title Act (2015) NTN 11(10) 272-274

Native title - Public benevolent institutions (PBI) - Benefits management structures - Indigenous Community Development Corporation - Australia

Murray, I. Public benevolent institutions for native title groups: an underappreciated model? (2015) 43(3) Fed L Rev 423-454

Administrative Law

Administrative justice - Judicial review - Tribunals - Government departments - Public authorities - Acts of Scottish Parliament - Court of Session - Scotland

Reed, R. The development of judicial review in Scotland. [2015] (4) Juridical Review 325- 336

Judicial review - Research study - Comparative analysis - Scotland - England - Wales - UK

Page, A. The judicial review caseload: an Anglo-Scottish comparison. [2015] (4) Juridical Review 337-352

Admiralty Law

Insurance - Scuttling - Onus of proof - Standard of proof - Marine Insurance Act 1909 (Cth) - Australia

Page, A. The judicial review caseload: an Anglo-Scottish comparison. [2015] (4) Juridical Review 337-352

Arbitration

Evidence - Relevance - Expert witnesses - UNCITRAL - International Arbitration Act 1974 (Cth) - Australia

Gleeson, M. Evidence in international commercial arbitration: some issues. (2015) VBN (158) 40-45

Banking Law

Mistaken payments - Banks - Electronic payments - Comparative analysis - epayments Code - USA - UK - Australia

Edwards, R. Mistaken consumer electronic payments. (2015) 89(12) ALJ 873-885

Constitutional Law

Constitutional interpretation - Functionalism - Formalism - Pragmatism - High Court - United States - Australia

Various articles: commentary on and response by Rosalind Dixon. (2015) 43(3) Fed L Rev 493-521

Federalism - Intergovernmental decision making - Intergovernmental agreements - Concentration of power in the Executive - Parliamentary controls - Transparency - Constitutional recognition of intergovernmental co-operation - Council of Australian Federation (CFA) - Council of Australian Governments (COAG) - Canada - Australia

Chordia, S. and Lynch, A. Constitutional incongruence: explaining the failure of the Council of the Australian Federation (2015) 43(3) Fed L Rev 339-367

Office of Governor-General - Role - Powers
- Head of State - Commonwealth
Constitution, s2 and s61 - Australia
**Smith, D. The Governor-General is
Australia's head of state. (2015) 89(12)
ALJ 857-856**

Separation of powers - Executive - Judiciary
- Parliamentary powers - Judicial power -
Commonwealth Constitution, s49 -
Contempt - Legislature - Inherent power -
Privileges - Immunities - R v Richards, ex
parte Fitzpatrick & Browne - Australia
**Pannam, C. A case in history: R v
Richards; ex parte Fitzpatrick and
Browne. (2015) VBN (158) 86-94**

Contract Law

Breach of contract - Damages - Profits -
Disgorgement - Gain-based relief - Novoship
(UK) Ltd v Mikhaylyuk - UK
**Collins, P. Liability for profits in breach of
contract: revisiting Attorney-General v
Blake [2015] 23 RLR 44-58**

Corporations Law

Directors - Fiduciary duties - Breach of duty
- Conflict of interest - Conflict of duty -
Disclosure - Re Colorado Products Pty Ltd
(in prov liq) - Agricultural Land Management
Ltd v Jackson (No 2) - Corporations Act 2001
(Cth) - Australia
**Teele Langford, R and Ramsay, I.
Directors' conflicts: must a conflict be
pursued for there to be a breach of duty?
(2015) 9(3) J Eq 281- 296**

Fraud - Dishonesty - Liability insurance -
Directors' and officers' insurance Third
party rights - Statutory charges -
Comparative law - Australia - New Zealand
**Tarr, J. Directors' and officers'
insurance: recent critical issues in
Australia and New Zealand [2016] (1) JBL
1-12**

Insolvency - Transparency - Court oversight
- Pre-pack administration - Law reform
proposals - Research study - Graham Review
- Comparative analysis - USA - UK
**Adebola, B. Proposed feasibility oversight
for pre-pack administration in England
and Wales: window dressing or effective
reform? [2015] (8) JBL 591-606**

Liquidation - Insolvency Courts - Multi-
jurisdictional - Jurisdiction - Forum-
shopping - Court powers - Information - Stay
of proceedings - Anti-suit injunctions -
Relief - UNCITRAL Model Law - UK -
Australia
**Aitken, L. 'Modified universalism':
confined, or confirmed? (2015) 41(1) Aust
Bar Rev 27-43**

Courts

Information technology - iPads - Jury
bundles - UK
**Grieves-Smith, P and Wood, S. Trial
evolution. [2015] (Dec) Counsel 31 - 33**

Judges - Judicial conduct - Guide to Judicial
Conduct - UK
**Feenan, D. Emotions at work. (2015) NLJ
165 (7678) 20**

Judges - Judicial independence - Judicial
tenure - Life tenure - Age limits - Term
limits - Mandatory retirement -
Comparative analysis - Research study - USA
- Australia - South Africa
**Opeskin, B. Models of judicial tenure:
reconsidering life limits, age limits and
term limits for judges. (2015) 35(4)
Oxford JLS 627 - 663**

Judges - Supreme Court of Canada - Panel
size - Panel composition - Research study -
Canada
**Alarie, B. et al. Panel selection on High
Courts. (2015) 65(4) U Toronto L J 335-
381**

Judicial system - Public confidence -
Judicial Commission - Australia
**Lumley, K and Sheard, R. Fourth
community awareness of the judiciary
program held at the commission. (2015)
27(11) JOB 101**

Criminal Law & Procedure

Evidence - Barristers - Best evidence - Cross-examination - Judges - Vulnerable eye-witnesses - Comparative analysis - Research study - R v Barker - New Zealand - UK

Henderson, E. Theoretically speaking: English judges and advocates discuss the changing theory of cross-examination. [2015] (12) Crim L R 929-948

Bribery - Corruption - Misconduct in public office - Public procurement - Organised crime - Scotland - UK

Campbell, L. Organised crime and corruption in the UK: responding through law. [2016] (1) Crim L R 20-34

Child abuse - Child protection - Domestic violence - Protection order - Jurisdictions - Research study - Comparative analysis - Australia

Jeffries, S, et al. Protecting Australia's children: a cross-jurisdictional review of domestic violence protection order legislation. (2015) 22(6) Psychiatry, Psychology & Law 800-813

Criminal liability - HIV transmission - Disclosure - Duty - Significant risk - Justifiable non-disclosure - Law reform proposal - R v Dica - R v Konzani - UK

Ryan, S. Disclosure and HIV transmission. (2015) 79(6) JCL 395-410

Defences - Self-defence - Honour - Retreat - USA - UK

Dsouza, M. Retreat, submission, and the private use of force. (2015) 35(4) Oxford JLS 727-753

Domestic violence - Trafficking - Gender - Social networks - Parental violence - School shooting - Apartheid - State institutional violence - Palestine - South Africa - UK - USA

Special issue. In the aftermath of violence: what constitutes a responsive response? (2015) 55(6) Brit.J Criminology

Evidence - Coincidence evidence - Double jeopardy - Retrial - Appeal - Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2015 (NSW) - NSW - Australia

Townsley, L. The Bowraville Murders: were they a coincidence? (2015) 40(4) Alt L J 243-246

Joint enterprise - Liability - Foreseeability - Mens rea - Recklessness - Risk - Secondary - UK

Dyson, M. Might alone does not make it right: justifying secondary liability. [2015] (12) Crim L R 967-985

Mandatory charges - Criminal Court charges - Law reform - UK

Criminal charges scrapped. (2015) NLJ 165 (7680) 20

Offences - Defences - Rape - Assault - Consent - NZ

Wall, J. Sexual offences and general reasons not to have sex. (2015) 35(4) Oxford JLS 777-798

Paperless arrests - Transparency - Accountability - Infringement notice offences - High Court - North Australian Aboriginal Justice Agency Ltd v Northern Territory - Police Administration Amendment Act 2014 (NT) - NT - Australia

Hunyor, J. Imprison me NT: paperless arrests and the rise of executive power in the Northern Territory. (2015) 8(21) Indigenous LB 3-9

Police - Procedures - Racial profiling - Minority groups - Director of Public Prosecutions v Kaba - Road Safety Act 1986(Vic) - Charter of Human Rights and Responsibilities Act 2006 (Vic) - Victoria - Australia

Hopkins, T. Racial profiling and the Road Safety Act 1986 (Vic): DPP v Kaba and s 59 (1)(a). (2015) 40(4) Alt L J 247-251

Serious sex offenders - Onus of proof - Show cause - Supervision orders - Reforms - Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015 (Vic) - Bail Act 1977 (Vic) - Victoria - Australia

McMahon M and Davids, C. Tightening eligibility for bail for persons on supervision orders in Victoria: repairing a broken system. (2015) 40(4) Alt L J 239-242

Witness - Eyewitness - Jurors - Inconsistency - Research study - USA

Jones, E. et al. The effect of inconsistency evaluations of a second eyewitness: it depends on who testifies first. (2015) 22(6) Psychiatry, Psychology & Law 814-829

Equity

Account of profits - Dishonest assistance - Secondary liability - Breach of fiduciary duty - Third party - Gain-based relief - UK
Devonshire, P. Account of profits for secondary liability: how far is too far? [2015] 23 RLR 59-72

Property rights - Family home - Parents - Children - Expectations - Proprietary estoppel - Beneficial interests - Joint venture constructive trusts - Remedies - Australia

Barkehall Thomas, S. Shared homes, broken promises and constructive trusts: why older generation plaintiffs are frequently worse off. (2015) 9(3) J Eq 239-263

Unconscionable bargains - Unconscionable dealing - *Kakavas v Crown Melbourne Ltd* - Australia

Carrera, A. Towards a theory of special disadvantage in unconscionable bargains in law. [2015] 23 RLR 21-43

Evidence

Appeals - Jurisdiction - State courts - State legislation - Uniform Evidence Acts - Discretion - Unfair evidence - Longman directions - *Haddara v R* - Evidence Act 1995 (NSW) - Judiciary Act 1903 (Cth) - Evidence Act 1995 (Cth) - NSW - Victoria - Australia
Leeming, M. The subtleties and complexities of the Evidence Acts, and the role of intermediate courts of appeal. (2015) 41(1) Aust Bar Rev 13-26

Expert witness - Forensic psychology - Psychologists - Testimony - Mental health - Australia

Gianvanni, E and Sharman, S. Psychologists as expert witnesses in Australian courtrooms. (2015) 22(6) Psychiatry, Psychology & Law 920-926

Human Rights

Autonomy - Capacity - Vulnerable adults - Mental Capacity Act 2005 (UK) - UK
Herring, J and Wall, J. Autonomy, capacity and vulnerable adults: filling the gaps in the Mental Capacity Act (2015) 35(4) Legal studies 698-719

Anti-discrimination - Fair work - Investigations - Fair Work Ombudsman - Compensation - Penalties - Fair Work Act 2009 (Cth) - Australia

Allen, D. Wielding the big stick: lessons for enforcing anti-discrimination law from the Fair Work Ombudsman. (2015) 21(1) AJHR 119-142

Free speech - Freedom of expression - Protests - Public assembly - Common law rights - Freedom of political communication - Violent - Non-violent - Move on powers - Victoria - WA - Tasmania - Australia
Ricketts, A. Freedom from political communication: the rhetoric behind anti-protest laws. (2015) 40(4) Alt L J 234-238

Marriage - Same-sex marriage - Equality - Commonwealth v ACT - Marriage Act 1962 (Cth) ACT - Australia

Collins, M. Law and the marriage equality debate. (2015) VBN (158) 54-60

Trafficking - Institutionalised victims - Modern Slavery Act 2015 (UK) - UK
Ahluwalia, P. Modern slavery. [2016] (Jan) Counsel 24-27

Insurance Law

Damages - Earthquake Commission v Insurance Council of New Zealand - Earthquake Commission Act 1993 (NZ) - NZ
Arthur, L. Increased flooding vulnerability and damage to residential land and buildings. [2015] (December) NZLJ 408-410

Fraudulent claims - Fundamental dishonesty - Fairclough v Summers - Criminal Justice and Courts Act 2015 (UK) - Civil Procedure Rule 44.16 - Ireland - UK
Swaby, G. Cheek by jowl: fraudulent insurance claims and the counter measures enacted in personal injury cases. (2015) 27(1) Insurance L J 15 - 42

Professional negligence - Mitigation cover - Rectification cover - Costs - Maxwell v Highway Hauliers Pty Ltd - High Court - Australia
Ulbrick, D. How two trucking accidents helped construction contractors to understand the scope of their mitigation cover. (2015) 27(1) Insurance L J 43-49

Volunteers - Liability - Civil liability - Public liability - Good Samaritan - Risk management - Comparative analysis - Australia
McGregor-Lowndes, M. et al. Spontaneous and episode volunteers: the legislative, insurance and risk management framework. (2015) 27(1) Insurance L J 1-14

Intellectual Property

Patents - D'Arcy v Myriad Genetics - Patents Act 1990 (Cth), s18(1) - High Court - Intellectual Property Enterprise Court of England and Wales (IPEC) - Australia - UK
Vickery, P. The Intellectual Property Enterprise Court of England and Wales. (2015) VBN (158) 70-73

Legal Education

Law schools - Chief Justice Marilyn Warren - National Courts and Tribunals Academy - Victoria University - Sir Zelman Cowen Centre- Court Services Victoria Act 2014 (Vic) - Victoria - Australia
McLeod, F. Launch of the National Courts and Tribunals Academy. (2015) VBN (158) News 12-13

Legal History

Law reports - Law reporting - Authorised law reporting - Editors - Publishing - CLR - Commonwealth Law Reports - Australia
Merralls, J. The Commonwealth Law Reports. (2015) VBN (158) 80-85

Legal Profession

Personalia - Appointment - Chief Judge Kidd - County Court - Victoria - Australia
A new Kidd in town. (2015) VBN (158) 63 - 68

Personalia - President Maxwell - Court of Appeal - Victoria - Australia
Costello, G and Hickey, N. Champion of change. (2015) VBN (158) 46-49

Personalia - Retirement - Chief Judge Rozenes - County Court - Victoria - Australia
Hampel, G. Micheal Rozenes AO, QC (2015) VBN (158) 50-53

Personalia - The Honourable Linda Dessau - Victoria - Australia
The Honourable Linda Dessau. AM, Governor of Victoria (2015) VBN (158) 24-25

Medical Law

Decision making - Ethics - Morals - Legal decisions - Best interests - Informed consent - Confidentiality - UK
Foster, C. and Miola, J. Who's in charge? the relationship between medical law, medical ethics and medical morality. (2015) 23(4) Med L Rev 505- 530

Medical treatment - Withdrawal - Vegetative state - Life-sustaining treatment - Artificial nutrition and hydration - Patients - Minimally conscious state - Persistent vegetative state - Court of protection - Declaratory relief - Airedale NHS Trust v Bland - UK

Halliday, S. et al. An assessment of the courts role in the withdrawal of clinically assisted nutrition and hydration from patients in a permanent vegetative state. (2015) 23(4) Med L Rev 556-587

Paternity testing - DNA - Posthumous - Death - Human Tissue Act 2004 (UK) - UK

Stirton, R and Wilkinson, M. In search of a father: legal challenges surrounding posthumous paternity testing. (2015) 23(4) Med L Rev 531-555

Military Law

Court martial - Military justice - Military tribunals - Appeal - Retrial - Court Martial Appeal Court - Armed Forces Discipline Act 1971 (NZ) - NZ

French, M. No tribulations of retrial for Commodore Keat: the consequences of the decision in Keat v R. (2015) 26(4) NZULR 715-735

Practice & Procedure

Class actions - Litigation - Consumers - Group proceedings - Opt out - Research study - Vulnerable persons - Queensland - Western Australia - Australia - UK

Special issue: class actions. (2016) 35(1) CJQ

Judicial review - Case management - Jurisdiction - Choice of forum - Gill review - Courts Reform (Scotland) Act 2014 - Scotland

Kelly, T. The potential impact of the Courts Reform (Scotland) Act 2014 on judicial review. [2015] (4) Juridical Review 387-398

Property Law

Damages - Direct loss - Causation - Legal theory - Private law - Sub-rules - Tort - UK
Beswick, S. "Losses in any event" in the case of damage to property. (2015) 35(4) Oxford JLS 755-775

Transfer collateral arrangements - Personal Properties Securities Act 2009 (Cth) - Australia

Special Issue: Personal property securities. (2015) 33(1) JCL

Transfer of land - Specific performance - Breach of contract - Pianta v National Finance & Trustee Ltd - Loan Investment Corporation of Australasia v Bonner (Loan Investments) - Australia

Yin, K. Specific performance in favour of a purchaser under a contract for the transfer of land - an analysis of the present Australian position. (2015) 41(1) Aust Bar Rev 79-101

Trespass of land - Environment protection - Shale gas - Hydraulic fracturing - Land access - Compensation - Fracking - Regulation - Consultation paper - Bocardo SA v Star Energy - UK

Morgan, J. Subsurface ownership and hydraulic fracturing in the UK: (probably) under my back [2015] (8) JBL 634 - 648

Succession Law

Beneficiaries - Administration - Wills - DNA - Baronetage - Judicial Committee - The Queen - UK

Nash, M. Opening Pandora's box. (2015) NLJ 165 (7677) 14-15

Torts

Causation - Responsibility - Legal reasoning - Torts - Negligence - Obligations - UK

Stapleton, J. An 'extended but-for' test for the causal relation in the law of obligations. (2015) 35(4) Oxford JLS 697-726

Contributory negligence - Judicial discretion - Discretionary apportionment - Fixed apportionment - Reduction of damages - Discounts - Comparative analysis - USA - Australia - Canada - UK

Goudkamp, J. Apportionment of damages for contributory negligence: a fixed or discretionary approach? (2015) 35(4) Legal studies 621-647

Defamation - Business defamation - Meaning - Tests - Radio 2UE Sydney v Chesterton - High Court - Australia

Gould, K. The common law tests of defamatory meaning in the wake of Radio 2UE Sydney v Chesterton. (2015) 41(1) Aust Bar Rev 44-78

Negligence - Proximity - Causality - Causal proximity - Research study - USA

Freng, S at al. Reversal of fortune: when does increased distance from an initial negligent act make one more blameworthy? (2015) 22(6) Psychiatry, Psychology & Law 927-948

Trusts

Trustees - Unilateral decisions - Transactions - Re Dion Investments Pty Ltd - Trustee Act 1925 (NSW),s 81- NSW - Australia

Raphael, D. What do we learn from the Court of Appeal decision in Dion Investments and how can the finding be avoided? (2015) 89(12) ALJ 867- 872

Resulting trust - Family home - Beneficial interests - Jones v Kernott - Calverley v Green - Trustees of the Property of Cummins (a Bankrupt) v Cummins - Baumgartner v Baumgartner - Comparative analysis - Australia - UK

Sarmas, L. The resulting trust and the family home on Australia: the end of the road? (2015) 9(3) J Eq 264-280